#### **EXHIBIT 82**

#### PACHULSKI STANG ZIEHL & JONES LLP

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Counsel for Highland Capital Management, L.P.

#### IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	- § 8	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	\$ § §	Case No. 19-34054-sgj11
Reorganized Debtor.	§ _ §	

#### DECLARATION OF KENNETH H. BROWN IN SUPPORT OF SUPPLEMENTAL MOTION TO DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS COUNSEL TO HCRE PARTNERS, LLC AND FOR RELATED RELIEF

- I, Kenneth H. Brown, pursuant to 28 U.S.C. § 1746(a) and under penalty of perjury, declare as follows:
- 1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Supplemental*



DOCS\_NY:44147.2 36027/003

Case 19-34054-sgjj11 DDo 28959 (Filed 19/10/12/10/21/20/2) DDo 28959 (Filed 20/20/21/20/2) Exhibit 82 Page 3 of 126

Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and

for Related Relief (the "Supplemental Motion") being filed concurrently with this Declaration. I

submit this Declaration based on my personal knowledge and review of the documents listed

below.

2. Attached as **Exhibit A** is a true and correct copy of the August 11, 2021 Deposition

Transcript of Rob Wills.

3. Attached as **Exhibit B** is a true and correct copy of the *Debtor's Amended Notice* 

of Rule 30(b))6) Deposition to Wick Phillips Gould & Martin, LLP [Docket No. 2608], dated July

26, 2021.

4. Attached as **Exhibit C** is a true and correct copy of the September 16, 2021

Deposition Transcript of Robert Kehr.

Dated: October 1, 2021.

/s/ Kenneth H. Brown

Kenneth H. Brown

#### **EXHIBIT A**

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Page 1
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2
       IN THE UNITED STATES BANKRUPTCY COURT
       FOR THE NORTHERN DISTRICT OF TEXAS
3
             DALLAS DIVISION
4
   IN RE:
5
                     CHAPTER 11
   HIGHLAND CAPITAL
   MANAGEMENT, L.P., CASE NO. 19-34054-SGI11
6
        Debtor.
7
8
   HIGHLAND CAPITAL
   MANAGEMENT, L.P.,
9
                      ADVERSARY PROCEEDING
        Plaintiff,
10
                     NO: 21-03000-SGI
     VS.
11
   HIGHLAND CAPITAL
12
   MANAGEMENT FUND ADVISORS,
   L.P.; NEXPOINT ADVISORS,
  L.P.; HIGHLAND INCOME
13
   FUND; NEXPOINT STRATEGIC
   OPPORTUNITIES FUND:
   NEXPOINT CAPITAL, INC.;
   AND CLO HOLDCO, LTD.,
15
        Defendants.
16
17
18
         DEPOSITION OF ROB WILLS, ESQ.
          VIA REMOTE VIDEOCONFERENCE
19
20
             August 11, 2021
             9:30 a.m., Central
21
22
23
    Reported by:
24
    Anne E. Vosburgh, CSR-6804, RPR, CRR
25
    Job No. 197673
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Page 2		Page 3
1	1	
2 REMOTE APPEARANCES:	2 REMOTE APPEARANCES (Continued):	
3	3	
4 On behalf of the Debtor:	4 On behalf of HCRE Partners, LLC (n/k/a NexPoint Real	
5 PACHULSKI STANG ZIEHL & JONES	5 Estate Partners, LLC):	
6 150 California Street	6 WICK PHILLIPS	
7 San Francisco, California 94111	7 100 Throckmorton Street	
8 BY: KENNETH BROWN, ESQ.	8 Fort Worth, Texas 76102	
9 - and -	9 BY: BRANT MARTIN, ESQ.	
10 PACHULSKI STANG ZIEHL & JONES	10 LAUREN DRAWHORN, ESQ.	
11 780 Third Avenue	11	
12 New York, New York 10017	12 On behalf of the Senior Employees and CPCM, LLC:	
13 BY: HAYLEY WINOGRAD, ESQ.	13 BAKER MCKENZIE	
14	14 1900 North Pearl Street	
15	15 Dallas, Texas 75201	
16 On behalf of Unsecured Creditors Committee:	16 BY: DEBRA DANDENEAU, ESQ.	
17 SIDLEY AUSTIN	17	
18 2021 McKinney Avenue	18 ALSO PRESENT:	
19 Dallas, Texas 75201	19 LA ASIA CANTY, Paralegal from Pachulski Stang	
20 BY: CHANDLER ROGNES, ESQ.	20	
21	21	
22	22	
23	23	
24	24	
25	25	
Page 4	1	Page 5
2 INDEX	2 EXHIBITS (Continued):	
3	3 Exhibit E Email chain, "RE: Unicorn - 90	
4 EXAMINATIONS	4 DSTs"	
5 WITNESS: ROB WILLS, ESQ.	5 Exhibit F SE Multifamily Holdings LLC 98	
6 Examination by Mr. Brown 6	6 First Amended and Restated	
7 Examination by Mr. Martin 113	7 Limited Liability Company	
8 Re-Examination by Mr. Brown 124	8 Agreement	
9	9 Exhibit H Email chain, "FW: Draft LLC 101	
10	10 Agreement"	
11	11 Exhibit   Email chain "RE: SE   122	
12	12 Multi-Family Holdings LLC:	
13 MARKED EXHIBITS	13 Amended and Restated,"	
14 NUMBER DESCRIPTION PAGE	14 beginning Bates	
15 Exhibit A Amended Notice of 30(b)(6) 11	15 Highland136853	
16 Deposition	16	
17 Exhibit B SE Multifamily Holdings LLC, 14	17	
18 Limited Liability Company	18	
19 Agreement, August 23, 2018	19	
20 Exhibit C Bridge Loan Agreement, 20	20	
21 September 26, 2018	21	
22 Exhibit D Email chain, "RE: Project 72	22	
1		
23 Unicorn - Final Org Charts,"	23	
24 with attachments	24	
25	25	

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1	Page 6			Page 7
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	3
2	Remote Videoconference Deposition	2	Willis?	
3	August 11, 2021, 9:30 a.m., Central	3	A. Wills.	
4		4	Q. Mr. Wills, you're an attorney; is	
5	PROCEEDINGS	5	that correct?	
6		6	A. Yes, sir.	
7	ROB WILLS, ESQ.,	7	Q. Okay. Can you tell me what your	
8	(Having been called to appear via	8	current role is and position with	
9	remote videoconference, declared his	9	Wick Phillips?	
10	testimony to be truthful under penalty	10	A. Sure. I'm an equity partner here.	
11	of perjury.)	11	I'm one of two partners that run the real	
12		12	estate group.	
13	EXAMINATION	13	Q. Okay. Have you ever had your	
14	BY MR. BROWN:	14	deposition taken before?	
15	Q. Would you state your full name for	15	A. No, sir.	
16	the record.	16	Q. Have you ever taken a deposition	
17	A. Sure. James Robert Wills, IV.	17	before?	
18	Q. Mr. Wills, I'm counsel for Highland	18	A. I have.	
19	Capital Management L.P. I think I'll be	19	Q. Okay. So can we all assume that	
20	referring to that entity, the Debtor,	20	you understand the rules, and I can	
21	throughout the deposition as Highland.	21	reasonably dispense with explaining to you	
22	Will you understand what I mean	22	the protocol and procedures for a deposition?	
23	when I refer to Highland as the Debtor?	23	A. Yes. That's fine with me.	
24	A. Yes, sir.	24	Q. Just very basically, you understand	
25	Q. And your last name is pronounced	25	you're under oath?	
	Page 8			Page 9
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	A. Yes, sir.	2	Civil Procedure 30(b)(6), made applicable in	
3	Q. And that what you say here is like	3	this proceeding by Bankruptcy Rule 9011?	
4	what you say in a court of law?	4	A. Yes, sir.	
5	A. Yes, sir.	5	Q. And you're aware that you're	
6	Q. It's important for you to	6	required to provide complete and	
7	understand my question. Wait until I'm	7	knowledgeable answers on behalf of	
8	finished before you answer.	8	Wick Phillips with respect to the topics that	
9	We don't want to be talking at the	9	have been designated in the Wick Phillips	
10	same time because that makes for an unclear	10	Rule 30(b)(6) deposition notice?	
11	record for the court reporter.	11	A. Yes, sir.	
12	A. Not a problem.	12	Q. And you understand that your	
13	Q. You understand all that?	13	responses will be binding on Wick Phillips in	
14	A. Yes, sir.	14	this matter?	
15	Q. You also understand that you'll	15	A. Yes, sir.	
16	have an opportunity to review the transcript	16	Q. And when I refer to "this matter,"	
17	of this deposition and make corrections?	17	again, at the risk of stating the obvious,	
18	A. Yes, sir.	18	this deposition is being taken today in	
19	Q. Okay. And that I'll be able to	19	connection with the Debtor's motion to	
20	comment on those corrections at the time of	20	disqualify Wick Phillips from representing an	
21	the hearing on this?	21	adverse party in connection with their proof	
1	A. Yes, sir.	22	of claim against the Debtor in the Debtor's	
22		l		
	Q. Okay. Do you understand that	23	bankruptcy case.	
22 23	Q. Okay. Do you understand that you've been designated as the witness for	23 24	bankruptcy case.  Is that your understanding?	

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	Dama 40			Dana 11
1	Page 10 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 11
2	Q. And you understand that what you	2	A. I reviewed the Motion to Disqualify	
3	say today in your testimony represents the	3	and the Brief in Support, my firm's	
4	testimony of the law firm of Wick Phillips	4	Opposition in that brief; as well as talking	
5	rather than your personal testimony?	5	with D.C. Sauter, a former partner of mine;	
6	A. Yes, sir, I do.	6	Rachel Sam, a current partner of mine; and	
7	Q. Okay. Do you know how you were	7	reviewing the exhibits and declarations	
8	selected as Wick Phillips' designated witness	8	attached to all the briefs, as well as our	
9	in connection with the disqualification	9	internal files and in relation.	
10	motion?	10	Q. Okay. How much time did you spend	
11	MR. MARTIN: I'm going to object	11	preparing for this deposition?	
12	and instruct the witness not to answer	12	A. It was over a couple of days. I	
13		13	would say several hours.	
1	based on the question of privilege.		•	
14	That's the law firm's privilege and	14	Q. About five?	
15	we're not going to waive it.	15	A. I would say right about there.	
16	BY MR. BROWN:	16	MR. BROWN: Could the court	
17	Q. Well, do you – can you answer that	17	reporter mark Exhibit A?	
18	question without disclosing the privilege?	18	THE REPORTER: As Exhibit A?	
19	A. I'm one of two partners in the real	19	MR. BROWN: Sure. Mark Exhibit A	
20	estate section of the firm. This is a real	20	as Exhibit A.	
21	estate matter that we handled.	21	(Amended Notice of 30(b)(6)	
22	Q. Okay. What have you done to become	22	Deposition, marked as Exhibit A.)	
23	prepared to provide complete, knowledgeable,	23	BY MR. BROWN:	
24	and binding answers to the questions relating	24	Q. And housekeeping matter. I don't	
25	to the topics in the deposition notice?	25	know	
	Page 12			Page 13
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	1 490 10
2	(Brief interruption.)	2	A. Yes, sir.	
3	BY MR. BROWN:	3	Q. Okay. Very good.	
4	Q. So Mr. Wills, do you have this in	4	During the deposition today, you	
5	front of you or are you just looking at it on	5	are required to answer the questions	
6	the screen?	_	·	
7		6	truthfully. If you don't know the answer to	
1	A. No. I've got the exhibits in front	6	truthfully. If you don't know the answer to a question, that is a legitimate response if	
18	A. No. I've got the exhibits in front of me. It's also on the screen	7	a question, that is a legitimate response if	
8	of me. It's also on the screen.	7 8	a question, that is a legitimate response if it's a truthful response, and I'm sure you	
9	of me. It's also on the screen.  Q. Okay. So have you seen this? It's	7 8 9	a question, that is a legitimate response if it's a truthful response, and I'm sure you know that.	
9 10	of me. It's also on the screen.  Q. Okay. So have you seen this? It's called Debtor's Amended Notice of 30(b)(6)	7 8 9 10	a question, that is a legitimate response if it's a truthful response, and I'm sure you know that.  But I want to make sure you	
9 10 11	of me. It's also on the screen.  Q. Okay. So have you seen this? It's called Debtor's Amended Notice of 30(b)(6)  Deposition to Wick Phillips Gould & Martin	7 8 9 10 11	a question, that is a legitimate response if it's a truthful response, and I'm sure you know that.  But I want to make sure you understand that if you say "I don't know" as	
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1 Wick Phillips 30(b)(6) - R. Wills 2 little shoppy and use the term "you" rather 3 than "Wick Phillips." But because of the 4 nature of this deposition, when I do use the 5 term "you." my doing to be referring to 6 term "you" my doing to be referring to 5 term "you." my doing to be referring to 5 term "you." my doing to be referring to 5 term "you." my doing to be referring to 5 to seem "you." when the no rote in connection 9 Wick Phillips unless I spacifically say I 7 vant your knowledge arther than 7 vant your knowledge arther than 7 vant your knowledge after than 8 vick Phillips. When he had no rote in connection 9 with this document, the preparation or 9 with this document, the preparation or 10 vick Phillips in this document. Orned? 11 vick Phillips froit is document. Corned? 11 vick Phillips (Corner) 12 vick Phillips (Corner) 14 vick Phillips (Corner) 14 vick Phillips (Corner) 15 vick Phillips (Corner) 16 vick Phillips (Corner) 17 vick Phillips (Corner) 17 vick Phillips (Corner) 18 vick Phillips (Corner) 18 vick Phillips (Corner) 19 vick Phillips (Vick Phillips (Vic	Pag	20.14	Page 15
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2	A. I'm not sure. I don't know.	2	scroll to page 18 of the LLC Agreement	
3	Q. Okay. Did Wick Phillips have	3	A. Yes, sir. Yes, sir.	
4	occasion to at any time need to become aware	4	Do you want me to read that?	
5	of the ownership percentages as between the	5	Q. Yeah, sure.	
6	Debtor, Highland, and HCRE, that were	6	A. It says that HCRE Partners, LLC has	
7	allocated in the LLC Agreement?	7	a percentage interest of 51 percent, and	
8	A. My suspicion would be in connection	8	Highland Capital Management L.P. has a	
9	with the financing, the Loan Agreement with	9	percentage interest of 49 percent.	
10	KeyBank and with Freddie, Freddie Mac,	10	Q. Okay. And do you have any	
11	obviously, the organizational structure is	11	understanding if those percentages were	
12	important to those lenders and, to a certain	12	correct or incorrect at the time the Limited	
13	extent, attached to those loan agreements.	13	Partnership Agreement was executed?	
14	And so as it relates to that, yes,	14	A. I assume they were correct at the	
15	sir.	15	time, yes, sir.	
16	Q. And do you know what the	16	Q. Did Wick Phillips have any	
17	ownership – does Wick Phillips know what the	17	communications with HCRE concerning the	
18	ownership percentages were in connection with	18	capital contributions required by the	
19	the LLC Agreement?	19	LLC Agreement?	
20	A. I know what the LLC Agreement says,	20	A. No, sir.	
21	yes, sir.	21	Q. Did Wick Phillips have any	
22	Q. And what does the LLC Agreement	22	communications with HCRE concerning the	
23	say?	23	ownership interests set forth in the	
24	A. It says	24	LLC Agreement?	
25	Q. I think if we flip to page 18,	25	A. Only in connection with as a	
	Page 20			Dogo 21
1	Page 20 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 21
2	conduit to KeyBank or Freddie Mac in terms of	2	screen – and I think you have a binder of	
3	who owns what.	3	exhibits, I assume?	
4	Q. Okay. We'll talk about that later,	4	A. Yes, sir.	
5	then, when we talk about the KeyBank	5	Q. So up on the screen marked as	
6	Loan Agreement.	6	Exhibit C, and hopefully in your binder also	
7	A. Okay.	7	as Exhibit C, is a document called the Bridge	
8	Q. But no communications –	8	Loan Agreement dated as of September 26,	
9	Wick Phillips had no communications with the	9	2018, among a group of entities set forth on	
10	parties with respect to the ownership	10	the agreement that I won't repeat, who are	
11	interests limited – if we limit that to the	11	the borrowers, and also the lender, KeyBank	
12	context of just the LLC Agreement, its	12	National Association, as agent, and KeyBanc	
13	drafting, negotiation, formation; is that	13	Capital Markets as the sole lead arranger and	
14	correct?	14	bookrunner.	
15	A. That's correct.	15	Is that the document you have as	
16	Q. And the same answer if, instead of	16	Exhibit C?	
17	asking about ownership percentages, I asked	17	A. Yes, sir.	
18	about contributions?	18	Q. Okay. Have you ever seen this	
19	A. Yes, sir. Same answer.	19	document before?	
20	MR. BROWN: Okay. Ms. Vosburgh,	20	A. Yes, sir.	
21	can we mark Exhibit C as Exhibit C.	21	Q. Okay. Are you familiar with it?	
22	(Bridge Loan Agreement, September	22	A. Yes, sir.	
23	26, 2018, marked as Exhibit C.)	23	Q. Is it a true copy of – let's –	
24	BY MR. BROWN:	24	this Exhibit C, for the rest of the	
25	Q. Okay. So Mr. Wills, up on the	25	deposition, I'm going to refer to it as the	
1	•			

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	EXHIDIT 62 F			
1	Page 22 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 23
2	Loan Agreement.	2	Q. Okay. Did Wick Phillips represent	
3	And will you understand and be	3	Highland in connection with the KeyBank in	
4	comfortable referring to Exhibit C as the	4	connection with the Loan Agreement?	
5	Loan Agreement?	5	A. Highland is a co-borrower, but not	
6	A. Yes, sir.	6	separately, no, sir.	
7	Q. Is this a true copy of the	7	Q. Okay. So is the answer to the	
8	Loan Agreement?	8	question did Wick Phillips represent Highland	
9	A. Yes, sir. I believe so.	9	in connection with the Loan Agreement yes or	
10	Q. Okay. Did Wick Phillips have any	10	no?	
11	role in connection with the Loan Agreement?	11	A. No. No, sir.	
12	A. Yes, sir.	12	Q. It had no representation of	
13	Q. Can you describe the role that	13	Highland?	
14	Wick Phillips played in connection with the	14	A. That's correct.	
15	Loan Agreement?	15	Q. Can you turn to – let's flip to	
16	A. Sure. We helped the property-level	16	page 3 of the Loan Agreement.	
17	borrowers here in connection with the	17	Okay. So I want to focus you on	
18	Project Unicom acquisition.	18		
19	This – the Loan Agreement that	19	A. Okay.	
20	we're looking at was for a bucket of	20	Q. Do you see where the term	
21	properties that could not get agency	21	"Borrower" is defined to include	
22	financing through Freddie Mac. So we needed	22	Highland Capital?	
23	KeyBank to come in and provide sort of some	23	A. Yes, sir.	
24	additional financing in connection with the	24	Q. And Highland Capital has been	
25	Project Unicom closing.	25	defined earlier in the Loan Agreement, has it	
l 1	Page 24 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 25
1 2	Wick Phillips 30(b)(6) - R. Wills	1 2	Wick Phillips 30(b)(6) - R. Wills Wick Phillips not represent, and he was	Page 25
2	Wick Phillips 30(b)(6) - R. Wills not, as Highland Capital Management, L.P.?	2	Wick Phillips not represent, and he was	Page 25
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1 Wick Philips 3(b)(s): R. Wills 2 have received" – as a condition – "a 1 feavorable withen opinion (addressed 3 borrows indudes Highland, is that connect?" 4 to the Administrative Agent and the 5 Landins and dated the Effective Date) 6 of Wick Philips Sould & Martin, LLP, 6 course for the Borrowse." 7 BY MR. BROWN. 8 Is that statement referring to 9 Wick Philips as? coursel for the borrower as 11 sweeral entities, including Highland, is that 12 statement in the Loan Agreement incorrect? 12 Statement in the Loan Agreement incorrect? 13 A. I mean, that's what it says, yes, 14 SYM. 15 Q. Is it incorrect as to who 17 West Philips prepasented. It is correct in 18 terms of providing a legal opinion. You 19 wouldn't have multiple legal opinions from 19 wouldn't have multiple legal opinions from 19 wouldn't have multiple legal opinions from 19 And do you see at Section 9.01(a) 20 different firms for the same borrower. 21 thybically, or collection of borrowers. 22 Q. So the Loan Agreement of Leve Agent and the eather it 25 refers to Wick Phillips is early the eather it 26 A Mys suppicion is this was the same 1 rotice provision as had been there in 2 previous learns that we had worked on – we, 3 Wick Phillips 30(b)(6) - R. Wills 3 Q. Okay, So was Wick Phillips 1 represented Highland Capital Management in 2 previous learns that we had worked on – we, 3 Wick Phillips 30(b)(6) - R. Wills 4 represented Highland Capital Management in 5 previous learns that we had worked on – we, 4 Wick Phillips, had worked on with KeySank, 5 A. Mys. sur loading of the prince of the proposed on the International of the proposed on a mentity that you didn't 5 Page 29 1 Wick Phillips 30(b)(6) - R. Wills 1 Q. Okay, So was Wick Phillips 1 represented Highland Capital Management in 5 previous learns that we had worked on – we, 5 Wick Phillips 3 had worked on with KeySank, 6 Q. Okay, So did Wick Phillips with 6 Loan Agreement or not? 7 A. Not that this was end thanges 11 Q. Okay, So was Wick Phillips 21 relate the six well and worked on with KeySan	_	Page 26			Page 27
3 bornover includes Highland, is that correct? 4 to the Administrative Agent and the 5 Lenders and dated the Effective Date) 6 of Vivick Phillips Gould & Martin, LLP, 7 counsel for the Bornover. 7 R YMR. BROWN: 8 Is that Statement referring to 9 wick Phillips as "counsel for the bornover as 10 and referencing back to the bornover as 11 several entities, including Highland, is that 11 several entities, including Highland, is that 12 statement in the Loan Agreement incorrect? 13 A. I mean, that's what it says, yes, 14 BY MR. BROWN: 15 Q. Is it incorrect? 16 A. It is incorrect as to who 17 Wick Phillips represented. It is correct in 18 terms of providing a legal opinion. You 19 different firms for the same bornover, 10 different firms for the same bornover, 11 spically, or collection of bornovers. 12 Q. Os to Loan Agreement—your 13 statistical firms for the same bornover, 14 BY MR. BROWN: 15 Q. Did Wick Phillips and the state of the lack of accuracy 16 A. It is incorrect? 17 Loan Agreement. Section 9.01 (a) sussessible of the same bornover, 18 by the same of providing a legal opinion. You 19 And do you see at Section 9.01(a) 20 different firms for the same bornover, 21 spically, or collection of bornovers. 22 Q. So the Loan Agreement—your 23 testimony today on behalf of Wick Phillips is 24 that this Loan Agreement, to the extent it 25 refers to Wick Phillips represented to the 3 extent It reflects half Wick Phillips 3 notices, with the bornover being a collection 4 represented "Highland Capital Management in 5 connection with the Loan Agreement in 6 Q. Okay, So was Wick Phillips in 7 care of the entities that you represented as 8 opposed to an entity that you don't 9 presented on the we, 9 Wick Phillips and provided on the we, 9 Wick Phillips as of which we did represent some. 10 And once Highland Capital Management in 11 Occobornover, which had not been the case 12 previously, it was not changed. 13 Q. Okay, So was Wick Phillips 14 Coeling and the section of the bornover in the parties to 15 Q. Okay, So was Wick	1		1	Wick Phillips 30(b)(6) - R. Wills	raye 21
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1 Wick Phillips 30(b)(6) - R. Wills 2 2021, is inconsistent with your testimony 3 a MR. MARTIN: Objection, form. 4 MR. MARTIN: Objection, form. 5 A I'm sorn, Did you say HC LP. 6 or ———————————————————————————————————	D-112 20		Dana 24
biday, is it nor?  MR. MARTIN: Objection, form.  A mr sorry. Did you say HC L.P.  6 or —  6 or —  7 BYMR. BROWN:  8 Q. HCM L.P., which is Highland Capital  9 Management, L.P., the Debtor, Highland.  10 A. Right.  11 Q. We're calling it Highland.  12 So in Wick Phillips brief filed on  13 May Pith, 2021, in opposition to the Motion to  13 May Pith, 2021, in opposition to the Motion to  14 Disqualify, Wick Phillips said:  15 "As a borrower under the bridge  16 loars"—which is what we're referring  17 to as the Loan Agreement —  18 "Wick Phillips was coursed to HCM  19 L.P."  19 as co-borrower, Highland, under the bridge of the borrower in the bridge of the process of the bridge of the process of the proc		1 Wick Phillips 30(b)(6) - R. Wills	Page 31
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24 retention agreements from your clients when 24 clients relating to the Loan Agreement?			
	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		
25 you undertake a representation?   25 A. Not that I'm aware of.	1		
	you undertake a representation?	25 A. INOLUIALITTI aware OI.	

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Page  1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 35
2 Q. Do you know whether Wick Phillips	2 consent for common representations?	
3 considered whether a conflict waiver was	3 MR. MARTIN: Objection, form.	
4 necessary because of the joint representation	4 A. Yes, sir.	
5 of clients under the Loan Agreement?	5 BY MR. BROWN:	
6 A. I do not.	6 Q. And do you know why Wick Phillips	
7 Q. Do you know if Wick Phillips	7 did not obtain a written conflict waiver in	
8 undertook any analysis to determine if the	8 conformity and compliance with	
9 joint representation of the borrowers	9 Section 1.07 –	
10 presented a conflict or a potential conflict	10 MR. MARTIN: Objection, form.	
11 for which a conflict waiver was required?	11 BY MR. BROWN:	
12 A. I do not.	12 Q. — in connection with the joint	
13 Q. You don't know if it was done?	13 representation of clients under the	
14 A. I don't know.	14 Loan Agreement?	
15 Q. Okay. Were there any discussions		
, ,	<ul><li>15 MR. MARTIN: Same objection.</li><li>16 A. I do not know.</li></ul>	
<ul><li>16 of the issue of the advisability or necessity</li><li>17 of a conflict waiver in connection with the</li></ul>		
18 Loan Agreement that Wick Phillips had?	18 Q. Do you know if Wick Phillips had	
19 A. I don't believe so.	19 any discussions with any of the borrowers –	
20 Q. Do you – is Wick Phillips familiar	20 as that term is defined under the	
21 with the Texas Rules of Professional Conduct,	21 Loan Agreement – about actual or potential	
22 Section 1.07?	22 conflicts that could arise from	
23 A. Yes, sir.	23 Wick Phillips' joint representation of them	
24 Q. And do you know if it's familiar	24 under the Loan Agreement?	
25 with Section 1.07(a) that requires written	25 A. I don't.	
Page		Page 37
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	
2 Q. Did Wick Phillips undertake any	2 whether the representation – well, as you	
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# Casse 119-334054-sgjj111 Doloo2835910-1812ed E104011120127/12121ter End 12-0401112012712324137913:145age 10-28sof Exhibit 82 Page 15 of 126

1 Wick Phillips 30(b)(6) - R. Wills 2 MR. BROWN: No, I'm sorry. That – 3 let's first –  Page 38 1 Wick Phillips 30(b)(6) - R. Wills 2 otherwise provided herein or as 3 otherwise indicated by the Lead	
	Page 39
3 let's first – 3 otherwise indicated by the Lead	
4 Okay. That's fine. That's fine. 4 Borrower."	
5 BY MR. BROWN: 5 Correct?	
6 Q. So if you – could you review this 6 A. Correct.	
7 Section 1.05, Mr. Wills. 7 Q. And that "The Lead Borrower sh	all
8 A. Sure. (Reviewing document.) 8 cause the transfer of the proceeds to the	•
9 Okay. 9 other borrowers on whose behalf such lo	oan and
10 Q. Okay. Did you have a chance to 10 advance was obtained."	
11 look at both (a) and (b) of Section 1.05? 11 So is it your understanding that	
12 A. Yes, sir. 12 under this Loan Agreement, the lead bo	rrower
13 Q. Okay. So the lead borrower under 13 had the ability to both determine when the	ne
14 the Loan Agreement is HCRE, correct? 14 advances were made and to direct whe	re the
15 A. Correct. 15 transfers went?	
16 Q. And this Section 1.05 talks about 16 A. Yes, sir, according to this	
17 the appointment of the lead borrower and some 17 provision.	
18 of the rights and obligations of the lead 18 Q. Okay. And do you also have ar	1
19 borrower, correct? 19 understanding that the other borrowers,	
20 A. Yes, sir. 20 including Highland, were on the hook jo	intly
21 Q. And Section (b) says: 21 and severally for all amounts that were	
22	
23 advance provided under the Loans which 23 A. Yes, sir.	
24 is requested by the Lead Borrower 24 Q. So, in your mind, does the fact	
25 shall be advanced as and when 25 that HCRE could determine when adva	nces were
Page 40	Page 41
1 Wick Phillips 30(b)(6) - R. Wills 1 Wick Phillips 30(b)(6) - R. Wills	
2 made and direct how those advances were 2 sir.	
3 applied, while Highland was jointly and 3 Q. You don't know one way or the	
4 severally liable for those advances, does 4 other?	
5 that give rise to a conflict or potential 5 A. No, sir.	
5 that give rise to a conflict or potential 5 A. No, sir. 6 conflict between Highland and HCRE? 5 A. No you know if Wick Phillips eve	r
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	Page 42	1		Page 43
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	raye 43
2	A. I don't.	2	A. I do not.	
3	Q. Who was Wick Phillips' client	3	Q. You understand you're testifying on	
4	contact at HCRE in connection with the	4	behalf of Wick Phillips right now, correct?	
5	Loan Agreement?	5	A. Yes, sir.	
6	A. I believe there were several that	6	Q. Who was Wick Phillips' client	
7	we typically deal with, Matt Goetz,	7	contact at Highland in connection with the	
8	Matt McGraner. Freddy Chang was at one point	8	Loan Agreement?	
9	some form of in-house counsel there.	9	A. I don't believe we have a client	
10	Q. So Matt Goetz. Do you know if	10	contact for Highland.	
11	Matt Goetz was an employee of Highland?	11	Q. And why was that?	
12	A. I don't know.	12	A. We – I mean, our silo is the real	
13	Q. Do you know who he was employed by?	13	estate silo for NexPoint that handles loan	
14	A. Idon't.	14	agreements like we're looking at right now.	
15	Q. What about Mr. McGraner; do you	15	Highland is a separate part of that company.	
16	know if he was an employee of Highland?	16	Q. But Wick Phillips has already	
17	A. I don't.	17	acknowledged in its Opposition that it	
18	Q. Do you know if he was an employee	18	represented Highland in connection with the	
19	of HCRE?	19	Loan Agreement. And I'm just trying to	
20	A. I do not.	20	establish whether, in connection with that	
21	Q. What about Freddy Chang; do you	21	acknowledged representation, Wick Phillips	
22	know if he was an employee of Highland?	22	had a client contact at Highland.	
23	A. I don't.	23	And so the question is did	
24	Q. Do you know if he was an employee	24	Wick Phillips have a client contact and, if	
25		25	•	
1	Page 44 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 45
2	A. Not to my knowledge.	2	with this representation, Wick Phillips'	
3	Q. No client contact. Okay.	3	representation of the borrowers under the	
4	Did Wick Phillips have contact with	4	Loan Agreement, you don't know how	
5	James Dondero in connection with the	5	Wick Phillips made a determination of what	
6	Loan Agreement?	6	hat the individuals it spoke to were wearing,	
7	A. Not to my knowledge.		do you?	
8	,			
1	Q Okay With respect to Mr Geotz	7 8	•	
a	Q. Okay. With respect to Mr. Geotz, who you did indicate was a client contact for	8	MR. MARTIN: Objection, form.	
9	who you did indicate was a client contact for	8	MR. MARTIN: Objection, form.  A. I don't know if a determination was	
10	who you did indicate was a client contact for HCRE –	8 9 10	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.	
10 11	who you did indicate was a client contact for HCRE – MR. MARTIN: Objection, form.	8 9 10 11	MR. MARTIN: Objection, form. A. I don't know if a determination was made at all, no, sir. BY MR. BROWN:	
10 11 12	who you did indicate was a client contact for HCRE – MR. MARTIN: Objection, form. BY MR. BROWN:	8 9 10 11 12	MR. MARTIN: Objection, form. A. I don't know if a determination was made at all, no, sir. BY MR. BROWN: Q. And do you know whether	
10 11 12 13	who you did indicate was a client contact for HCRE – MR. MARTIN: Objection, form. BY MR. BROWN: Q. – how did Wick Phillips determine	8 9 10 11 12 13	MR. MARTIN: Objection, form. A. I don't know if a determination was made at all, no, sir. BY MR. BROWN: Q. And do you know whether Wick Phillips made any distinction in terms	
10 11 12 13 14	who you did indicate was a client contact for HCRE – MR. MARTIN: Objection, form. BY MR. BROWN: Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing	8 9 10 11 12 13 14	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that — the client contacts it	
10 11 12 13 14 15	who you did indicate was a client contact for HCRE – MR. MARTIN: Objection, form. BY MR. BROWN: Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of,	8 9 10 11 12 13 14 15	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that – the client contacts it communicated with in connection with the	
10 11 12 13 14 15 16	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?	8 9 10 11 12 13 14 15 16	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that — the client contacts it communicated with in connection with the Loan Agreement, whether it made any	
10 11 12 13 14 15 16 17	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?  MR. MARTIN: Objection, form.	8 9 10 11 12 13 14 15 16 17	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that — the client contacts it communicated with in connection with the Loan Agreement, whether it made any distinction whether those individuals were	
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10 11 12 13 14 15 16 17 18 19	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?  MR. MARTIN: Objection, form.  A. My assumption is wearing a NexPoint hat, as typically is the case.	8 9 10 11 12 13 14 15 16 17 18	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that – the client contacts it communicated with in connection with the Loan Agreement, whether it made any distinction whether those individuals were communicating with it on behalf of Highland or HCRE?	
10 11 12 13 14 15 16 17 18 19 20	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?  MR. MARTIN: Objection, form.  A. My assumption is wearing a NexPoint hat, as typically is the case.  BY MR. BROWN:	8 9 10 11 12 13 14 15 16 17 18 19 20	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir.  BY MR. BROWN:  Q. And do you know whether  Wick Phillips made any distinction in terms of people that — the client contacts it communicated with in connection with the Loan Agreement, whether it made any distinction whether those individuals were communicating with it on behalf of Highland or HCRE?  MR. MARTIN: Objection, form.	
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10 11 12 13 14 15 16 17 18 19 20 21 22 23	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?  MR. MARTIN: Objection, form.  A. My assumption is wearing a NexPoint hat, as typically is the case.  BY MR. BROWN:  Q. And what is that assumption based on?  A. Our prior representations and	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir. BY MR. BROWN:  Q. And do you know whether Wick Phillips made any distinction in terms of people that — the client contacts it communicated with in connection with the Loan Agreement, whether it made any distinction whether those individuals were communicating with it on behalf of Highland or HCRE?  MR. MARTIN: Objection, form.  A. I don't know.  MR. MARTIN: Is now a good time to take a break?	
10 11 12 13 14 15 16 17 18 19 20 21 22	who you did indicate was a client contact for HCRE –  MR. MARTIN: Objection, form.  BY MR. BROWN:  Q. – how did Wick Phillips determine what hat, if you will, Mr. Geotz was wearing and what entity he was speaking on behalf of, communicating on behalf of?  MR. MARTIN: Objection, form.  A. My assumption is wearing a NexPoint hat, as typically is the case.  BY MR. BROWN:  Q. And what is that assumption based on?	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. MARTIN: Objection, form.  A. I don't know if a determination was made at all, no, sir. BY MR. BROWN:  Q. And do you know whether Wick Phillips made any distinction in terms of people that – the client contacts it communicated with in connection with the Loan Agreement, whether it made any distinction whether those individuals were communicating with it on behalf of Highland or HCRE?  MR. MARTIN: Objection, form.  A. I don't know.  MR. MARTIN: Is now a good time to	

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1	Page 46 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 47
2	BY MR. BROWN:	2	Loan Agreement?	
3	Q. Mr. Wills, do you know what the	3	A. The Highland Limited Partnership?	
4	purpose of the Loan Agreement was?	4	Q. I'm sorry. Do you know – let me	
5	A. To provide financing in connection	5	rephrase the question. I misstated it.	
6	with the Project Unicorn property	6	Do you know whether or not the	
7	acquisitions.	7	ownership interests between – as and between	
8	Q. Which was going to be done by the	8	Highland and HCRE in the LLC was an issue	
9	LLC? The acquisitions were going to be by	9	that was part of the Loan Agreement?	
10	the LLC?	10	A. I'm not sure I understand your	
11	A. By some subsidiaries, but yes, sir.	11	question. I apologize.	
12	Q. And do you know what HCRE's role	12	Q. Okay. Did the ownership interest	
13	was in connection with the Loan Agreement?	13	in the LLC between Highland and HCRE – was	
14	A. They were the lead borrower.	14	that a component of the Loan Agreement?	
15	•		·	
16	Q. Okay. And we've already talked about to some extent what that involved.	15   16	A. Yes, sir. Q. Okay. And in what way?	
17		17		
	Do you know what Highland's role was in connection with the Loan Agreement?		A. Just as far as which party was	
18	•	18   19	51 percent and which was 49 percent.  Q. I'd like to scroll to Schedule 3.15	
19	A. It's a little bit like I've already			
20	mentioned, but primarily to provide more	20	of the Loan Agreement.	
21	credit to the borrowing base, to the	21	MS. CANTY: Do you know which page	
22	collective definition of "borrower."	22	that's on, Ken?	
23	Q. Do you know whether the ownership	23	Never mind. I see it.	
24	structure of the Limited Partnership was an	24	MR. BROWN: Yeah.	
25	issue that was addressed in the	25		
1	Mick Phillips 20/h)/6\ P Mills	1	Mick Phillips 20/h/6) P. Mills	Page 49
1	Wick Phillips 30(b)(6) - R. Wills BY MR. BROWN:	1	Wick Phillips 30(b)(6) - R. Wills	
2		2	Loan Agreement?	
3	Q. Okay. Let's go back to the prior	3	MR. MARTIN: Objection, form.	
4	page, the caption page, Schedule 3.15.	4	A. No, sir. We provided these	
5	Okay. Mr. Wills, are you familiar	5	schedules to KeyBank. BY MR. BROWN:	
6	with Schedule 3.15?		BY MR. BROWN:	
7		6		
_	A. Yes, sir.	7	Q. Okay. You provided the schedules	
8	Q. What role did Wick Phillips have in	7 8	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the	
9	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the	7 8 9	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?	
9 10	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?	7 8 9 10	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir.	
9 10 11	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the	7 8 9 10 11	<ul><li>Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?</li><li>A. No, sir.</li><li>Q. Did it have any – did it have any</li></ul>	
9 10 11 12	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the	7 8 9 10 11 12	<ul> <li>Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?</li> <li>A. No, sir.</li> <li>Q. Did it have any – did it have any role in connection with the preparation of</li> </ul>	
9 10 11 12 13	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.	7 8 9 10 11 12 13	<ul> <li>Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?</li> <li>A. No, sir.</li> <li>Q. Did it have any – did it have any role in connection with the preparation of the schedules?</li> </ul>	
9 10 11 12 13 14	<ul> <li>Q. What role did Wick Phillips have in connection with Schedule 3.15 of the</li> <li>Loan Agreement?</li> <li>A. We provided these – the attachments to KeyBank to attach here as the schedule.</li> <li>Q. Okay. Let's look at the</li> </ul>	7 8 9 10 11 12 13 14	<ul> <li>Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?</li> <li>A. No, sir.</li> <li>Q. Did it have any – did it have any role in connection with the preparation of the schedules?</li> <li>A. Just as sort of the conduit between</li> </ul>	
9 10 11 12 13 14 15	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.	7 8 9 10 11 12 13 14 15	<ul> <li>Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?</li> <li>A. No, sir.</li> <li>Q. Did it have any – did it have any role in connection with the preparation of the schedules?</li> <li>A. Just as sort of the conduit between the business folks and the lender.</li> </ul>	
9 10 11 12 13 14 15 16	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could	7 8 9 10 11 12 13 14 15 16	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender.  Q. The business folks at the borrower?	
9 10 11 12 13 14 15 16 17	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.	7 8 9 10 11 12 13 14 15 16 17	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct.	
9 10 11 12 13 14 15 16 17	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could	7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any	
9 10 11 12 13 14 15 16 17 18	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?	7 8 9 10 11 12 13 14 15 16 17	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any changes to these schedule – to the schedules	
9 10 11 12 13 14 15 16 17 18 19 20	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?  Okay.	7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any	
9 10 11 12 13 14 15 16 17 18 19 20 21	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?  Okay.  BY MR. BROWN:	7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any changes to these schedule – to the schedules attached as schedule – to Schedule 3.15, did it make any changes to them after it received	
9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?  Okay.	7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any changes to these schedule – to the schedules attached as schedule – to Schedule 3.15, did	
9 10 11 12 13 14 15 16 17 18 19 20 21	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?  Okay.  BY MR. BROWN:	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir. Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender. Q. The business folks at the borrower? A. Correct. Q. So did Wick Phillips make any changes to these schedule – to the schedules attached as schedule – to Schedule 3.15, did it make any changes to them after it received	
9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. What role did Wick Phillips have in connection with Schedule 3.15 of the Loan Agreement?  A. We provided these – the attachments to KeyBank to attach here as the schedule.  Q. Okay. Let's look at the attachments.  MR. BROWN: Flip – if we could flip to the very next page.  Okay. Is there any way we could change the view on that so it's upright?  Okay.  BY MR. BROWN:  Q. Is this one of the attachments?	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Okay. You provided the schedules to KeyBank. Did Wick Phillips prepare the schedules?  A. No, sir.  Q. Did it have any – did it have any role in connection with the preparation of the schedules?  A. Just as sort of the conduit between the business folks and the lender.  Q. The business folks at the borrower?  A. Correct.  Q. So did Wick Phillips make any changes to these schedule – to the schedules attached as schedule – to Schedule 3.15, did it make any changes to them after it received them from the borrowers?	

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Page 50  1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips	30(b)(6) - R. Wills
2 A. Yes, sir.	2 Q. And that	would be a reference to
3 Q. And did it make any determination	3 the underlying pr	operty that was being
4 as to their accuracy?	4 acquired; is that of	correct?
5 A. I would assume so, yes, sir.	5 A. Yes, sir.	
6 Q. And, for example, this first	6 Q. Okay. A	nd, again, the ownership
7 schedule reflects the ownership interests of	7 percentages for I	HCRE and Highland in the LLC
8 Highland and HCRE in the LLC; is that		he same, 51 for HCRE and
9 correct?	9 49 percent for Hi	
10 A. Yes, sir.	10 A. Yes, sir.	
11 Q. And it reflects the ownership		ed on your prior review of
12 interest as 49 percent for Highland and		nts as Schedule 3.15, your
13 51 percent for HCRE; is that correct?		at they all — I think
14 A. Yes, sir.		m, and they all reflect the
15 Q. And you don't have – is it your		percentage in the LLC; is that
16 understanding that that ownership allocation	16 correct?	, porcontago in a lo LEO, lo a lat
17 was correct at the time these schedules were		, yes, sir.  We can flip
18 prepared?	18 through them, b	
19 A. Yes, sir.	-	vhy don't we just briefly
20 Q. And let's scroll down to the next		
	· · · · · ·	n. If we go to the next one.
21 attachment in the schedule.	<del>-</del>	s is for Victoria Park.
22 This is the second attachment. At		nership percentage reflected
23 the bottom it says it's for Gulfstream Isles.	23 there, correct?	
24 Do you see that?	24 A. Yes, sir.	
25 A. Yes, sir.	25 Q. And the	next one, this is for the
Page 52  1 Wick Phillips 30(b)(6) - R. Wills	1 Wiek Phillips	Page 53
		30(b)(6) - R. Wills
	2 change a little	
3 Same ownership percentage reflected	3 BY MR. BROWN	
4 there, correct?	<del>-</del>	e can do that. Let's look
5 A. Yes, sir.	=	e of them. Let's just do a
6 Q. The next one, Heights at	6 page flip.	
7 Olde Towne.	-	is Governors Green.
8 Same ownership percentage reflected	·	ect to the interests that
9 there, correct?		e LLC, they're the same,
10 A. Yes, sir.		and and HCRE, as the
11 Q. Okay. I don't think we have to	•	nt and 51 percent
12 flip further after these. They say what they	12 respectively?	
13 say.	13 A. Yes, sir.	
14 A. Okay.	=	et's go down to the next
15 MR. MARTIN: Mr. Brown, I don't	15 one, Stoney Rid	_
16 pretend to know as much about these	-	using just on the
17 transactions as you certainly do, but I	•	st in the LLC, it's reflected
do believe that starting with some of	18 as 49 percent H	ghland and 51 percent HCRE,
19 the properties towards the back, there	19 correct?	
and properties terrained and paterty and to	20 A. Yes, sir.	
20 are — while some of the ownership		
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<ul> <li>are – while some of the ownership</li> <li>percentages may be the same, you may</li> <li>want to go over them. Governors Green,</li> </ul>	22 Again, foo 23 the ownership in	using just on the LLC,
20 are – while some of the ownership 21 percentages may be the same, you may 22 want to go over them. Governors Green, 23 Stoney Ridge, Oak Mill –	22 Again, foo 23 the ownership in	using just on the LLC, terest is reflected at ighland and 51 percent for

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Wick Philips 30(b)(6) - R. Wills   2	_				Dana 55
2 A Yes, sir. 3 Q. And the next one, which is 4 Battleground Park, and focusing again on the 5 LLC, the covenership interests are reflected as 6 49 percent Highland, 51 percent HCRE. 7 Cornect? 8 A Yes, sir. 9 Q. And for Lakes at Renaissance Park, 10 again focusing on the LLC, the ownership 11 percentages in effected as 8 percent 11 12 Highland and 51 percent HCRE. cornect? 13 A Yes, sir. 14 Q. And for Brandywine – huh. Unless 14 C. And for Brandywine – huh. Unless 15 MR. MARTIN: That's one of the 16 address the LLC interests. 17 MR. MARTIN: That's one of the 18 reasons! twas asking. 18 Isles. 19 MR. RROWN: Yeah. Yeah. 19 MR. RROWN: Yeah. Yeah. 20 MR. MARTIN: That's one of the 21 reasons! was asking. 21 MR. RROWN: Yeah. Yeah. 22 MR. RMRTIN: That's one of the 23 mere workership percentages are reflected for 14 highland and HCRE. cornect? 24 to make your record and firm not trying 25 to interrupt you. 26 Or For Walker Ranch, which is the next page, the same ownership percentages are reflected for the LLC as on the prior charts, 29 cornect? 30 A. Yes, sir. 40 Q. And with respect to Towne Crossing, 41 Wick Phillips 30(b)(6) - R. Wills 42 A. Yes, sir. 43 C. For Walker Ranch, which is the next page, the same ownership percentages are reflected. 44 A. Yes, sir. 45 Q. And with respect to Towne Crossing, 46 Q. And with respect to the LLC, the same 47 verneral percentages are reflected, cornect? 48 A. Yes, sir. 49 C. For Walker Ranch, which is the next page, the same ownership percentages are reflected, cornect? 49 C. And with respect to Towne Crossing, 40 C. Province of the Lighand and HCRE, cornect? 41 A. Yes, sir. 42 C. And with respect to Towne Crossing, 43 C. Province are effected for Highland and HCRE, cornect? 44 A. Yes, sir. 45 C. And with respect to Towne Crossing, 46 C. Province are effected for Highland and HCRE, cornect? 47 A. Yes, sir. 48 C. Province are effected for Highland and HCRE, cornect? 49 C. Next Page, this mean ownership percentages are reflected, cornect? 40 A. Yes, sir. 41 C. And with respect to	1	Page 54 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 55
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15 I'm missing something, this doesn't even 16 address the LLC interests. 16 address the LLC interests. 17 MR MARTIN: That's one of the 18 reasons I was asking. 18 Isles. 19 MR, BROWN: Pardon me? 19 And with respect to the LLC, it is 20 MR, BROWN: Pardon me? 21 reasons I was asking. 22 MR, BROWN: Yeah. Yeah. 23 MR, BROWN: Yeah. Yeah. 24 Undership percentage of 49 percent in 25 Interrupt you. 26 Interrupt you. 27 Wick Phillips 30(b)(6) - R. Wills 28 same ownership percentages are reflected for 29 Jagain reflected for the LLC, the 29 And with respect to the LLC, the 20 Again, this is Arborwalk 21 Wick Phillips 30(b)(6) - R. Wills 22 same ownership percentages are reflected for 23 lightland and HCRE as on the prior charts, 24 correct? 25 A Yes, sir. 26 Q. For Walker Ranch, which is the next 27 pags, the same ownership percentages are 28 reflected for the LLC as on the prior charts, 39 correct? 30 A Yes, sir. 31 Q. And with respect to Towne Crossing, 31 Interrupt you. 4 A Yes, sir. 5 Q. The next page, Arbolita. 6 With respect to the LLC, the same 7 ownership percentages are reflected, correct? 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fairways. 10 A Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 A Yes, sir. 13 Q. The next page, the same ownership percentages are 14 Grand Oasis, it's the same enflected, correct? 15 A Yes, sir. 16 Q. And with respect to the next page, 17 ownership percentages are reflected, correct? 18 A Yes, sir. 19 Q. And with respect to the next page, 10 And with respect to the next page, 11 ownership percentages are reflected, correct? 12 A Yes, sir. 13 Q. The next page, with respect to the lack page with respect to the LLC, the same 19 C. And with respect to the next page, 10 A Yes, sir. 11 ownership percentages are reflected for the LLC in the 11 Q. And with respect to the next page, 12 A Yes, sir. 13 Q. The next page, With respect to 14 A Yes, sir. 15 Q. And with respect to the next page, 16 Grand Oasis,	1				
16 address the LLC interests. 17 MR, MARTIN: That's one of the 18 reasons I was asking. 19 MR. BROWN: Pardon me? 19 And with respect to the LLC, it is 20 again reflecting and repeating the same 21 reasons I was asking. 22 MR, BROWN: Yeah. 23 MR, MARTIN: That's one of the 24 to make your record and I'm not trying 25 to interrupt you. 26 to interrupt you. 27 A Yes, sir. 28 A Yes, sir. 29 And with respect to the LLC, the 29 And with respect to the LLC, the 29 Highland and 51 percentin HCRE. Correct? 20 And with respect to the LLC, the 20 And with respect to the LLC, the 21 Wick Phillips 30(b)(6) - R. Wills 22 same ownership percentages are reflected for 23 Highland and HCRE as on the prior charts, 24 correct? 25 A. Yes, sir. 26 Q. For Walker Ranch, which is the next 27 page, the same ownership percentages are 28 reflected for the LLC as on the prior charts, 29 correct? 30 A. Yes, sir. 41 A. Yes, sir. 52 Q. And with respect to Towne Crossing, 53 are reflected in the LLC, correct? 54 A. Yes, sir. 55 A. Yes, sir. 66 With respect to the LLC, the same 67 page, the same ownership percentages 68 reflected for the LLC as on the prior charts, 69 Q. Next page, Painways. 60 A. Yes, sir. 70 And with respect to Towne Crossing, 71 A. Yes, sir. 71 Q. And with respect to The next page, 72 when the same ownership percentages are 73 reflected in the LLC, correct? 74 A. Yes, sir. 75 A. Yes, sir. 76 A. Yes, sir. 77 Percentages are reflected, correct? 88 A. Yes, sir. 89 Q. Next page, with respect to the LLC, the same 80 A. Yes, sir. 80 A. Yes, sir. 81 A. Yes, sir. 82 A. Yes, sir. 83 A. Yes, sir. 84 A. Yes, sir. 85 A. Yes, sir. 86 A. Yes, sir. 86 A. Yes, sir. 87 A. Yes, sir. 88 A. Yes, sir. 99 Q. Next page, with respect to the LLC in the 87 A. Yes, sir. 89 A. Yes, sir. 80 A. Yes, sir. 81 A. Yes, sir. 81 A. Yes, sir. 82 A. Yes, sir. 83 A. Yes, sir. 84 A. Yes, sir. 85 A. Yes, sir. 86 A. Yes, sir. 86 A. Yes, sir. 87 A. Yes, sir. 88 A. Yes, sir. 89 C. And with respect to the LLC in the 80 A. Yes, sir. 80 A. Yes, sir. 81 A. Yes, sir. 81 A.	1	•			
17 MR. MARTIN: That's one of the reasons I was asking. 18 Issues. 19 MR. BROWN: Pardon me? 20 MR. BROWN: Pardon me? 21 reasons I was asking. 22 MR. MARTIN: That's one of the 20 again reflecting and repeating the same 21 ownership percentage of 49 percent in 22 Highland and 51 percent in HCRE. Correct? 23 MR. MARTIN: I know you're trying 23 A. Yes, sir. 24 to make your record and I'm not trying 23 A. Yes, sir. 25 to interrupt you. 26 Wick Phillips 30(b)(6) - R. Wills 2 ownership percentages are reflected for 3 and Highland and HCRE as on the prior charts, 4 correct? 27 A. Yes, sir. 28 A. Yes, sir. 29 C. For Walker Ranch, which is the next 7 page, the same ownership percentages are reflected for the LLC as on the prior charts, 8 Page 56 West Place, the same ownership percentages are reflected in the LLC, correct? 30 A. Yes, sir. 31 C. And with respect to the LLC, the same 4 Next page, the same ownership percentages are reflected in the LLC, correct? 4 A. Yes, sir. 5 Q. The next page, Fairways. 6 West Place, the same ownership percentages are reflected in the LLC, correct? 7 A. Yes, sir. 7 C. And with respect to the next page, 15 percentages are reflected in the LLC, correct? 8 A. Yes, sir. 9 Convert? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 19 Q. And with respect to the next page, 15 percentages are reflected for Highland and HCRE, correct? 20 A. Yes, sir. 21 A. Yes, sir. 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 A. Yes, sir. 26 A. Nex, sir. 27 A. Yes, sir. 28 A. Yes, sir. 39 Correct Place A. Yes,	1				
18 Isles.  18 Isles.  MR. BROWN: Pardon me?  MR. MARTIN: That's one of the  20 again reflecting and repeating the same  21 reasons I was asking.  22 MR. BROWN: Yeah. Yeah.  23 MR. BROWN: Yeah. Yeah.  24 to make your record and I'm not trying  25 to interrupt you.  26 A Yes, sir.  1 Wick Phillips 30(b)(6) - R. Wills  2 same ownership percentages are reflected for Highland and HCRE as on the prior charts,  4 correct?  5 A Yes, sir.  6 Q. For Walker Ranch, which is the next  7 page, the same ownership percentages are  8 reflected for the LLC as on the prior charts,  9 correct?  1 A Yes, sir.  10 With respect to the LLC, the same  11 Ownership percentages are reflected, correct?  12 A Yes, sir.  13 and Highland as on the prior charts, ownership percentages are reflected for HCRE  1 With respect to the LLC, the same  17 ownership percentages are reflected, correct?  18 A Yes, sir.  19 Q. And with respect to Towne Crossing,  11 the next page, the same ownership percentages  12 are reflected for the LLC, correct?  13 are reflected in the LLC, correct?  14 A Yes, sir.  15 Q. And with respect to the next page,  16 A Yes, sir.  17 reflected for Highland and HCRE, correct?  18 A Yes, sir.  19 Q. And with respect to the next page,  19 Grand Casis, if's the same ownership  19 percentages are reflected or Highland as  21 A Yes, sir.  22 Q. Okay, I think that takes us  23 A Yes, sir.  24 Q. Next page, which is Hidden Lake.	1			•	
19 MR. BROWN: Pardon me? 20 MR. MARTIN: That's one of the 21 reasons I was asking. 22 MR. BROWN: Yeah. Yeah. 23 MR. MARTIN: I know you're trying 24 to make your record and I'm not trying 25 to interrupt you. 26 Millips 30(b)(6) - R. Wills 27 same ownership percentages are reflected for 28 Highland and HCRE as on the prior charts, 39 A. Yes, sir. 40 C. For Walker Ranch, which is the next 41 page, the same ownership percentages are 42 reflected for the LLC as on the prior charts, 43 correct? 44 A. Yes, sir. 55 A. Yes, sir. 65 Q. For Walker Ranch, which is the next 66 reflected for the LLC as on the prior charts, 67 correct? 88 reflected for the LLC as on the prior charts, 80 correct? 91 A. Yes, sir. 91 Q. And with respect to Towne Crossing, 92 Ith enext page, the same ownership percentages are 93 are reflected in the LLC, correct? 94 A. Yes, sir. 95 Q. And with respect to the next page, 96 Millips 30(b)(6) - R. Wills 97 correct? 99 Q. Next page, Parlaways. 90 Next page, arbotita. 90 Next page, the same ownership 91 correct? 91 Q. And with respect to the next page, 91 Grand Oasis, it's the same ownership 91 percentages are reflected, correct? 92 Q. And the next page, Vista Ridge, the 93 same LLC percentages are reflected for the LLC in the 94 same LLC percentages are reflected for the LLC in the 95 same LLC percentages – the same ownership 96 Q. And the next page, Vista Ridge, the 97 same LLC percentages – the same ownership 98 percentages are reflected for the LLC in the 99 same LLC percentages – the same ownership 99 Q. And the next page, Vista Ridge, the 90 same LLC percentages – the same ownership 90 Q. And the next page, Vista Ridge, the 91 percentages are reflected for Highland as 91 A. Yes, sir. 92 Q. Next page, which is Hidden Lake. 91 A. Yes, sir. 92 Q. Next page, which is Hidden Lake. 92 through it, And I apologized for dragging	1			_	
20 MR. MARTIN: That's one of the reasons I was asking. 21 ownership percentage of 49 percent in reasons I was asking. 22 MR. BROWN: Yeah. Yeah. 23 MR. MARTIN: I know you're trying 24 to make your record and I'm not trying 25 to interrupt you. 26 volume Page 56 27 Wick Phillips 30(b)(6) - R. Wills 28 same ownership percentages are reflected for 3 Highland and HCRE as on the prior charts, 4 A. Yes, sir. 29 A. Yes, sir. 20 A. Yes, sir. 30 A. Yes, sir. 41 Wick Phillips 30(b)(6) - R. Wills 42 ownership percentages are reflected for 4 A. Yes, sir. 43 and Highland as on the prior charts, correct? 44 A. Yes, sir. 55 A. Yes, sir. 66 Q. For Walker Ranch, which is the next page, the same ownership percentages are reflected for the LLC as on the prior charts, correct? 45 A. Yes, sir. 46 Q. For walker Ranch, which is the next page, the same ownership percentages are reflected for the LLC as on the prior charts, correct? 46 A. Yes, sir. 57 Q. Next page, Fairways. 58 A. Yes, sir. 59 Q. Next page, Fairways. 59 Q. Next page, with respect to the LLC, the same worth of the LLC, correct? 50 A. Yes, sir. 51 Q. And with respect to the next page, with respect to the LLC, correct? 51 Q. And with respect to the next page, with respect to the LLC, correct? 51 Q. And with respect to the next page, with respect to the next page, with respect to the LLC percentages are reflected for Highland and HCRE, correct? 51 Q. And with respect to the next page, with respec	1	-			
21 reasons I was asking. 22 MR. BROWN: Yeah. Yeah. 23 MR. ARTIN: I know you're trying 24 to make your record and I'm not trying 25 to interrupt you. 26 Vinder Phillips 30(b)(6) - R. Wills 27 same ownership percentages are reflected for Highland and 51 percentages are reflected for HCRE 28 Highland and HCRE correct? 39 Highland and HCRE as on the prior charts, 40 correct? 40 A. Yes, sir. 51 Wick Phillips 30(b)(6) - R. Wills 52 same ownership percentages are reflected for HCRE 53 Highland and HCRE as on the prior charts, 54 correct? 55 A. Yes, sir. 64 C. For Walker Ranch, which is the next 65 page, the same ownership percentages are reflected for HCRE 66 With respect to the LLC, the same 77 page, the same ownership percentages are reflected, correct? 88 A. Yes, sir. 99 correct? 90 C. Next page, Fairways. 100 A. Yes, sir. 111 O. And with respect to Towne Crossing, 112 the next page, the same ownership percentages 113 are reflected in the LLC, correct? 114 A. Yes, sir. 115 O. And with respect to the next page, 116 West Place, the same LLC percentages are 117 reflected for Highland and HCRE, correct? 118 Summers Landing, there is no indication 119 O. And with respect to fround Crossing, 110 Percentages are reflected for Highland as 111 C. And with respect to the LLC in the 112 C. And with respect to the next page, 113 correctages are not be prior charts, correct? 114 Grand Oasis, it's the same ownership 115 O. And with respect to the next page, 116 A. Yes, sir. 117 reflected for Highland and HCRE, correct? 118 Summers Landing, there is no indication 119 O. And the next page, Vista Ridge, the 120 same LLC percentages are reflected for Highland as 121 A. Yes, sir. That's correct. 122 Q. Okay. I think that takes us 123 A. Yes, sir. 124 Q. Next page, which is Hidden Lake. 125 ownership percentages of 43 percent in HCRE. 126 O. Next page, which is Hidden Lake. 127 through it. And lapologize for dragging 128 through it. And lapologize for dragging 129 through it. And lapologize for dragging 120 through it. And lapologize	1			·	
MR. BROWN: Yeah. Yeah.  MR. MARTIN: I know you're trying  to make your record and I'm not trying  to make your record and I'm not trying  to make your record and I'm not trying  to interrupt you.  Page 55  Wick Phillips 30(b)(6) - R. Wills  same ownership percentages are reflected for  Highland and HCRE as on the prior charts,  correct?  A Yes, sir.  C Q. For Walker Ranch, which is the next  reflected for the LLC as on the prior charts,  reflected for the LLC as on the prior charts,  A Yes, sir.  A Yes, sir.  C Q. For Walker Ranch, which is the next  reflected for the LLC as on the prior charts,  reflected for the LLC as on the prior charts,  are reflected in the LLC, correct?  A Yes, sir.  A Yes, sir.  A Yes, sir.  C And with respect to Towne Crossing,  the next page, the same ownership percentages  are reflected in the LLC, correct?  A Yes, sir.  A Yes, sir.  C And with respect to the next page,  With respect to the LLC, the same  ownership percentages are reflected, correct?  A Yes, sir.  Mith respect to the LLC, the same  ownership percentages are reflected, correct?  A Yes, sir.  Mith respect to the LLC, the same  ownership percentages are reflected, correct?  A Yes, sir.  A Ye	1		1		
MR. MARTIN: I know you're trying to make your record and I'm not trying to make your record and I'm not trying to interrupt you.  Page 56  Wick Phillips 30(b)(6) - R. Wills same ownership percentages are reflected for Highland and HCRE as on the prior charts, correct?  A. Yes, sir.  A. Yes, sir.  C. Q. For Walker Ranch, which is the next page, the same ownership percentages are reflected for the LLC as on the prior charts, correct?  A. Yes, sir.  C. Q. For Walker Ranch, which is the next page, the same ownership percentages are reflected for the LLC as on the prior charts, correct?  Mith respect to the LLC, the same vownership percentages are reflected, correct?  A. Yes, sir.  O. And with respect to Towne Crossing, the next page, the same ownership percentages are reflected in the LLC, correct?  A. Yes, sir.  O. And with respect to the LLC, the same  where the next page, with respect to the LLC, the same  ownership percentages are reflected, correct?  A. Yes, sir.  With respect to the LLC, the same  ownership percentages are reflected, correct?  A. Yes, sir.  C. And with respect to Towne Crossing, the next page, with respect to the LLC, the same  ownership percentages are reflected, correct?  A. Yes, sir.  Grand Oasis, its the same ownership  Dercentages are nethected for Highland as  A. Yes, sir.  B. A. Yes, sir.  A. Yes, sir.  B. Summers Landing, there is no indication  percentages are reflected for Highland as  A. Yes, sir.  A. Yes	1	_			
24 to make your record and I'm not trying 25 to interrupt you.  26 Q. Again, this is Arborwalk.  27 And with respect to the LLC, the  Page 57  Wick Phillips 30(b)(6) - R. Wills  1 Wick Phillips 30(b)(6) - R. Wills  2 same ownership percentages are reflected for  3 Highland and HCRE as on the prior charts,  4 correct?  4 A. Yes, sir.  5 Q. For Walker Ranch, which is the next  6 Q. For Walker Ranch, which is the next  7 page, the same ownership percentages are  8 reflected for the LLC as on the prior charts,  9 correct?  10 A. Yes, sir.  11 Q. And with respect to Towne Crossing,  11 the next page, the same ownership percentages  12 a. Yes, sir.  13 are reflected in the LLC, correct?  14 A. Yes, sir.  15 Q. And with respect to the next page,  16 West Place, the same LLC percentages are  17 reflected for Highland and HCRE, correct?  18 A. Yes, sir.  19 Q. And with respect to the next page,  10 West Place, the same LLC percentages are  11 (a. A. Yes, sir.  12 (b. A. Yes, sir.  13 (a. The next page, with respect to  14 A. Yes, sir.  15 (a. A. Yes, sir.  16 (a. Yes, sir.  17 (a. And with respect to  18 A. Yes, sir.  19 percentages are reflected for Highland and HCRE, correct?  19 percentages are on the prior charts, correct?  10 A. Yes, sir.  11 (a. A. Yes, sir.  12 (b. A. Yes, sir.  13 (c. The next page, with respect to  14 A. Yes, sir.  15 (a. A. Yes, sir.  16 (a. Yes, sir.  17 (a. And with respect to  18 A. Yes, sir.  19 percentages are reflected for Highland as  20 A. A Yes, sir.  21 percentages are reflected for Highland as  21 A. Yes, sir.  22 Q. Okay. I think that takes us  23 A. Yes, sir. That's correct.  24 everybody through that, but your counsel is	1		1		
25 And with respect to the LLC, the  1 Wick Phillips 30(b)(6) - R. Wills 2 same ownership percentages are reflected for 3 Highland and HCRE as on the prior charts, 4 correct? 4 A. Yes, sir. 5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to Towne Crossing, 16 West Place, the same ownership percentages 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 16 A. Yes, sir. 17 q. And with respect to 18 A. Yes, sir. 19 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to 19 Q. And with respect to 19 Q. And with respect to 19 A. Yes, sir. 19 Q. And with respect to 19 LC percentages are reflected for Highland as 20 A. Yes, sir. 21 percentages are not percentages 21 A. Yes, sir. 22 percentages are not indication 23 A. Yes, sir. 24 Q. Okay. I think that takes us 25 A. Yes, sir. 26 Q. Next page, which is Hidden Lake. 27 everybody through that, but your counsel is	1		1		
1 Wick Phillips 30(b)(6) - R. Wills 2 same ownership percentages are reflected for 3 Highland and HCRE as on the prior charts, 4 correct? 4 A. Yes, sir. 5 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fainways. 10 With respect to the LLC, the same 11 Q. And with respect to Towne Crossing, 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, with respect to served? 14 A. Yes, sir. 15 Q. And with respect to the next page, with respect to the next page, with respect to the next page, with respect to served? 16 A. Yes, sir. 17 Q. And with respect to so indication 18 A. Yes, sir. 19 Q. And with respect to field in the next page, with respect to summers Landing, there is no indication 19 Q. And the next page, Vista Ridge, the same ownership with respect to same LLC percentages are reflected for Highland as 21 A. Yes, sir. That's correct. 20 Q. Okay. I think that takes us through it. And I apologize for dragging everybody through that, but your counsel is	1			_	
1 Wick Phillips 30(b)(6) - R. Wills 2 same ownership percentages are reflected for 3 Highland and HCRE as on the prior charts, 4 correct? 4 A. Yes, sir. 5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 Q. Next page, Fairways. 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. The next page, Fairways. 16 With respect to the LLC, the same 17 ownership percentages are reflected, correct? 18 are reflected in the LLC, correct? 19 Q. Next page, Fairways. 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 Grand Oasis, it's the same ownership 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 19 here – no reflection of the LLC in the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 A. Yes, sir. 23 through it. And I applogize for dragging 24 Q. Next page, which is Hidden Lake. 24 everybody through that, but your counsel is	23	ю інтенарт уба.	20	And with respect to the ELO, the	
2 same ownership percentages are reflected for 3 Highland and HCRE as on the prior charts, 4 correct? 4 A. Yes, sir. 5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fainways. 10 A. Yes, sir. 10 With respect to the LLC, the same 11 Q. And with respect to Towne Crossing, 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to Towne Crossing, 16 Q. And with respect to Towne Crossing, 17 Q. And with respect to the next page, 18 Grand Oasis, it's the same ownership 19 Q. And with respect to the next page, 19 percentages as on the prior charts, correct? 10 A. Yes, sir. 11 Grand Oasis, it's the same ownership 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 A. Yes, sir. 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, Vista Ridge, the 19 La Yes, sir. 19 Q. And with respect to the next page, Vista Ridge, the 19 here – no reflection of the LLC in the 20 same LLC percentages – the same ownership 21 A. Yes, sir. That's correct. 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 24 everybody through that, but your counsel is	1		1	Wick Philling 30(h)(6) - P. Wille	Page 57
3 Highland and HCRE as on the prior charts, 4 correct? 4 A. Yes, sir. 5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. The next page, with respect to the LLC, the same 16 ownership percentages are reflected, correct? 17 the next page, the same ownership percentages 18 are reflected in the LLC, correct? 19 Q. Next page, with respect to the LLC, the same 19 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to 19 Q. And with respect to 19 Q. And the next page, Vista Ridge, the 19 same LLC percentages – the same ownership 20 chart, is that correct? 21 percentages are reflected for Highland as 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 A. Yes, sir. 24 Correct? 26 veverybody through that, but your counsel is	Ι.	. , , , ,			
4 A. Yes, sir. 5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 enext page, the same ownership percentages 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to Towne Crossing, 16 West Place, the same ownership percentages 17 ownership percentages are reflected, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, 10 with respect to the LLC, the same 11 ownership percentages are reflected, correct? 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 19 here – no reflection of the LLC in the 20 same LLC percentages are reflected for Highland as 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 A. Yes, sir. 24 everybody through that, but your counsel is	1				
5 A. Yes, sir. 6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fairways. 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 the next page, the same ownership percentages 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, 19 D. Next page, with respect to 19 Q. And with respect to the next page, 10 West Place, the same LLC percentages are 11 Q. And with respect to the next page, 12 A. Yes, sir. 13 Q. The next page, Fairways. 14 West, sir. 15 Q. And with respect to the LLC, the same 16 A. Yes, sir. 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to 19 Q. And with respect to 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 West page, which is Hidden Lake. 26 Veverybody through that, but your counsel is	1	· ·	١.	- · · · · · · · · · · · · · · · · · · ·	
6 Q. For Walker Ranch, which is the next 7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fairways. 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to 18 Summers Landing, there is no indication 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 A. Yes, sir. 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 24 everybody through that, but your counsel is	1				
7 page, the same ownership percentages are 8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fairways. 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, 10 with respect to the prior charts, correct? 11 Q. The next page, with respect to 12 A. Yes, sir. 13 Q. The next page, with respect to 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 A. Yes, sir. 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 19 here – no reflection of the LLC in the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 A. Yes, sir. 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 HCRE as on the prior charts, correct? 26 everybody through that, but your counsel is	1			· -	
8 reflected for the LLC as on the prior charts, 9 correct? 9 Q. Next page, Fairways. 10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 11 ownership percentages are reflected, correct? 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to the next page, 19 percentages as on the prior charts, correct? 10 A. Yes, sir. 11 Grand Oasis, it's the same ownership 15 percentages as on the prior charts, correct? 16 A. Yes, sir. 17 Q. And with respect to 18 A. Yes, sir. 18 Summers Landing, there is no indication 19 Q. And the next page, Vista Ridge, the 19 here – no reflection of the LLC in the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 A. Yes, sir. 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 24 everybody through that, but your counsel is	7		7	•	
9 Q. Next page, Fairways.  10 A. Yes, sir.  11 Q. And with respect to Towne Crossing,  12 the next page, the same ownership percentages  13 are reflected in the LLC, correct?  14 A. Yes, sir.  15 Q. And with respect to the next page,  16 West Place, the same LLC percentages are  17 reflected for Highland and HCRE, correct?  18 A. Yes, sir.  19 Q. And with respect to  10 With respect to the LLC, the same  11 ownership percentages are reflected, correct?  12 A. Yes, sir.  13 Q. The next page, with respect to  14 Grand Oasis, it's the same ownership  15 percentages as on the prior charts, correct?  16 A. Yes, sir.  17 Q. And with respect to  18 A. Yes, sir.  19 Q. And the next page, Vista Ridge, the  20 same LLC percentages – the same ownership  21 percentages are reflected for Highland as  22 HCRE as on the prior charts, correct?  23 A. Yes, sir.  24 Q. Next page, which is Hidden Lake.  29 Worth respect to the LLC, the same  10 With respect to the LLC, the same  11 ownership percentages are reflected, correct?  12 A. Yes, sir.  13 Q. The next page, with respect to  14 Grand Oasis, it's the same ownership  15 percentages as on the prior charts, correct?  16 A. Yes, sir.  17 Q. And with respect to  18 Summers Landing, there is no indication  19 here – no reflection of the LLC in the  20 chart, is that correct?  21 A. Yes, sir. That's correct.  22 Q. Okay. I think that takes us  23 A. Yes, sir.  24 everybody through that, but your counsel is	<u>'</u>		\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		
10 A. Yes, sir. 11 Q. And with respect to Towne Crossing, 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 24 Q. Next page, which is Hidden Lake. 26 With respect to the LLC, the same 17 wonership percentages are reflected, correct? 18 A. Yes, sir. 19 Q. And with respect to 19 percentages as on the prior charts, correct? 20 Chart, is that correct? 21 percentages are reflected for Highland as 22 Q. Okay. I think that takes us 23 A. Yes, sir. 24 everybody through that, but your counsel is	Ι.	•	١		
11 Q. And with respect to Towne Crossing, 12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 24 Q. Next page, which is Hidden Lake. 26 veerybody through that, but your counsel is	1				
12 the next page, the same ownership percentages 13 are reflected in the LLC, correct? 14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 26 A. Yes, sir. 27 A. Yes, sir. 28 A. Yes, sir. 29 A. Yes, sir. 20 C. And with respect to 20 And with respect to 21 A. Yes, sir. 22 A. Yes, sir. 23 A. Yes, sir. 24 everybody through that, but your counsel is	1		l	•	
13 are reflected in the LLC, correct?  14 A. Yes, sir.  15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir.  19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir.  13 Q. The next page, with respect to 14 Grand Oasis, it's the same ownership 25 percentages as on the prior charts, correct? 16 A. Yes, sir. 17 Q. And with respect to 18 Summers Landing, there is no indication 19 here – no reflection of the LLC in the 20 chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 everybody through that, but your counsel is	1	·			
14 A. Yes, sir. 15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 26 And with respect to 27 percentages as on the prior charts, correct? 28 Grand Oasis, it's the same ownership 29 percentages as on the prior charts, correct? 29 A. Yes, sir. 20 Chart; is that correct? 20 Chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	I		1		
15 Q. And with respect to the next page, 16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And with respect to 18 Summers Landing, there is no indication 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 Percentages as on the prior charts, correct? 26 A. Yes, sir. 27 Percentages as on the prior charts, correct? 28 A. Yes, sir. 29 Percentages as on the prior charts, correct? 20 Chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1				
16 West Place, the same LLC percentages are 17 reflected for Highland and HCRE, correct? 18 A. Yes, sir. 19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 26 A. Yes, sir. 27 A. Yes, sir. 28 A. Yes, sir. 29 A. Yes, sir. 29 A. Yes, sir. 20 A. Yes, sir. 20 A. Yes, sir. 21 A. Yes, sir. That's correct. 22 A. Yes, sir. 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1	·	l	•	
17 reflected for Highland and HCRE, correct?  18 A. Yes, sir.  19 Q. And the next page, Vista Ridge, the  20 same LLC percentages – the same ownership  21 percentages are reflected for Highland as  22 HCRE as on the prior charts, correct?  23 A. Yes, sir.  24 Q. And with respect to  18 Summers Landing, there is no indication  19 here – no reflection of the LLC in the  20 chart; is that correct?  21 A. Yes, sir. That's correct.  22 Q. Okay. I think that takes us  23 through it. And I apologize for dragging  24 everybody through that, but your counsel is	1	· · · · · · · · · · · · · · · · · · ·			
18 A. Yes, sir.  19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake.  18 Summers Landing, there is no indication 19 here – no reflection of the LLC in the 20 chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	l	· · · ·			
19 Q. And the next page, Vista Ridge, the 20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 29 here – no reflection of the LLC in the 20 chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1	-	l	·	
20 same LLC percentages – the same ownership 21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 20 chart; is that correct? 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1			_	
21 percentages are reflected for Highland as 22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 21 A. Yes, sir. That's correct. 22 Q. Okay. I think that takes us 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1	· -			
22 HCRE as on the prior charts, correct? 23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 25 Q. Okay. I think that takes us 26 through it. And I apologize for dragging 27 everybody through that, but your counsel is	1		1		
23 A. Yes, sir. 24 Q. Next page, which is Hidden Lake. 23 through it. And I apologize for dragging 24 everybody through that, but your counsel is	1				
24 Q. Next page, which is Hidden Lake. 24 everybody through that, but your counsel is	1	·			
	1		l		
25 vvitn respect to the LLC, the same   25 correct that they're not all – they did not	1	• -			
	25	vviin respect to the LLC, the same	25	correct that they re not all — they did not	

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Page		Page 59
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 59
2 all reflect the ownership interests in the	2 Schedule 3.15 of the Loan Agreement?	1
3 LLC.	3 MR. MARTIN: Objection, form.	
4 But is it correct to say that, with	4 A. Yes, sir.	
5 respect to Schedule 3.15 of the	5 BY MR. BROWN:	
6 Loan Agreement, and the charts reflecting the	6 Q. And with whom did Wick Phillips	}
7 ownership interests of the subsidiaries that	7 have those communications?	
8 do address the ownership interest in the LLC,	8 A. I don't recall specific names, but	
9 they all identically reflect that the	9 different people within both NexPoint ar	ıd
10 ownership interest is 41 percent –	10 from the in-house team at Highland.	
11 49 percent in Highland and 51 percent in	11 Q. And how do you – what is the	
12 HCRE?	12 distinction between NexPoint and High	land in
13 A. Yes, sir.	13 Wick Phillips' mind?	
14 Q. And that's consistent with the	14 A. The NexPoint distinction would	be
15 ownership interest that is set forth in the	15 we've always been hired in the real est	
16 LLC Agreement, correct?	16 silo, only operating on sort of what I wo	
17 A. Correct.	17 call the property level.	
18 Q. Did you become familiar with the –	18 And then, sort of like when we're	4
19 with Schedule 3.15 of the Loan Agreement	19 looking at the structure charts in 3.15, c	
20 before or after your designation as the – as	20 you get up to really the 49/51 percent	1100
21 Wick Phillips' Rule 30(b)(6) witness?	21 distinction, Mr. Brown, that you were ta	lkina
22 A. After.	22 about, that structuring is beyond the so	=
23 Q. Did Wick Phillips have any	23 of our representation and typically goes	
24 communications with HCRE concerning the	24 in-house or a different law firm handling	
25 charts we just went through that comprise	25 that side of things for that portion of the	
Page 1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 61
2 company.	2 handful of other names that I believe ha	da
3 Q. Did Highland have separate counsel	3 role in creating some of these charts an	
4 in connection with the Loan Agreement?	4 passing them along to us, but I don't red	
5 A. I don't know.	5 their specific names.	
6 Q. So you, testifying here on behalf	6 Q. Okay. So, again, we'll get to	
7 of Wick Phillips, you don't know any of the	7 those emails and so we can follow up o	n that
8 names of the individuals with whom	8 But other than Mr. Geotz,	ii u iat.
Wick Phillips communicated relating to the	9 Mr. McGraner, Mr. Chang, and Mr. Broa	addus
10 HCRE representation; is that correct?	10 did Wick Phillips have communications	
11 MR. MARTIN: Objection, form.	11 any other individuals that were	VVIU I
12 A. No. That's – I don't think that's	_	with
	· ·	. vviu f
13 exactly what I said. We've already gone over		
14 a few of the Wick Phillips contacts at	14 MR. MARTIN: Objection, form.	
15 NexPoint, Matt McGraner and Matt Goetz.	15 A. Not that I'm aware of.	
16 BY MR. BROWN:	16 BY MR. BROWN:	
17 Q. Yes.	17 Q. Okay. Did Wick Phillips have	ofor
18 A. In reviewing some of the	18 communications with any individuals th	
19 correspondence in preparation for this	19 representatives of Highland in connecti	
20 deposition, yes, sir, there are some other	20 with the Loan Agreement other than M	r. Goetz,
21 names that I'm not familiar with. My partner	21 Mr. – well, strike that.	
22 at the time would have been having those	22 Did Wick Phillips have any	•
23 communications within the context of this	23 communications with representatives of	†
24 transaction.	24 Highland in connection with the	
25 So there's a Paul Broaddus and a	25 Loan Agreement?	
	I .	

# Casse 19-34054-sgj11 Doloo283590-1812ed E0401120127/1212ter Entre040112012712324137913:145ge 1048sof Exhibit 82 Page 21 of 126

_	Page CO	_		Dana (2)
1	Page 62 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 63
2	MR. MARTIN: Objection, form.	2	that with the representation of Highland in	
3	A. I think with Mr. Broaddus and	3	connection with the LLC?	
4	probably a handful of other folks in	4	A. No, sir. I mean – no, I guess, is	
5	connection with some of these charts and	5	the short answer.	
6	structuring.	6	Q. And are you aware of any writings	
7	BY MR. BROWN:	7	that reflect that the Hunton firm represented	
8	Q. When it spoke to, for example,	8	Highland in connection with the	
9	Mr. Broaddus, who was communicating on behalf	9	Loan Agreement?	
10	of Highland, was there another counsel	10	A. I'm not aware of those.	
11	involved for Highland in the communications	11	Q. And what do you base your	
12	that Wick Phillips had for Mr. Broaddus?	12	conclusion on that the Hunton firm	
13	A. I believe in connection with some	13	represented Highland in connection with the	
14	of the structuring, yes, sir.	14	Loan Agreement?	
15	Q. And who would that have been?	15	A. Because Hunton is typically the	
16	A. I believe it was Hunton & Williams.	16	Highland tax counsel that provides the	
17	Q. So you believe that	17	organizational charts that are attached to	
18	Hunton & Williams was involved in the	18	the Loan Agreement.	
19	representation of Highland in connection with	19	Q. And do you have independent – do	
20	the Loan Agreement?	20	you have knowledge did the organizational	
21	•			
1	MR. MARTIN: Objection, form.  A. In connection with the	21	charts that comprise Schedule 3.15 of the	
22		22 23	Loan Agreement, did they come from Hunton?	
23	organizational structure, yes, sir.		MR. MARTIN: Objection, form.	
24	BY MR. BROWN:	24	A. They came from Highland. So beyond	
25	Q. Are you sure you're not conflating	25	that, I'm not sure.	
	Page 64		NATI - L. DICHE OO/L-YON D. NATH-	Page 65
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	BY MR. BROWN:	2	counsel or REIT counsel.	
3	Q. Okay. So are you aware of any	3	So I can't say for certain that	
4	communications that Wick Phillips had with	4	it's Hunton, but I can say for certain that	
5	Hunton directly in connection with the	5	it's not Wick Phillips.	
6	Loan Agreement?	6	BY MR. BROWN:	
7	A. No, sir.	7	Q. So you can say – I'm sorry. You	
8	Q. So you have no independent	8	can say for certain that what is not	
9	knowledge – you have no knowledge, do you,	9	Wick Phillips?	
10	that Hunton represented Highland in	10	A. That we did not – we had no role	
11	connection with the Loan Agreement, do you?	11	in these org charts, which you're saying did	
12	MR. MARTIN: Objection, form.	12	Hunton represent Highland in connection with	
13	A. I don't know. Section 3.15 is part	13	the Loan Agreement.	
14	of the Loan Agreement. So that's where I'm	14	And I'm saying, it looks like it	
15	getting a little hung up, I suppose.	15	because these org charts were not prepared by	
16	BY MR. BROWN:	16	Wick Phillips, so somebody represented	
17	Q. Okay. And what part of Section –	17	Highland in connection with the	
18	of Schedule 3.15 leads you to believe that	18	Loan Agreement, to answer that question.	
19	Hunton represented Highland in connection	19	<ul><li>Q. But you're speculating that it was</li></ul>	
20	with the Loan Agreement?	20	Hunton, correct?	
21	MR. MARTIN: Objection, form.	21	A. That I just said I don't know	
	With the Conjection, form.			
22	A. I guess it's just a little bit of	22	for certain that it was Hunton.	
22 23			for certain that it was Hunton. Q. You actually – as you sit here	
1	A. I guess it's just a little bit of	22		
23	A. I guess it's just a little bit of deduction because Wick Phillips did not. So	22 23	Q. You actually – as you sit here	

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thick Philips 30(b)(s) - R. Wills 2 those charts, do you? 3 A. That's correct 4 Q. Orlay. Can you desorbe the 5 conversations that Wick Philips had with 6 HCRE concerning the organization charsh that 7 are attanded to -as Schedule 3.15 to the 8 Lean Agreement? 9 A. Generally, yes. To get an 10 understanding of what the structure was for 11 each of the properties so that we could 12 accurately communicate that to the lender. 13 Q. Orlay. Can you give me any more 14 detail as to what those communications were 15 beyond what you just testified to? 16 A. You know, it would sort of like 17 we had just tisked about, it would be whether 18 twas going to be part of the instructure, a 19 DST structure, you know, for purposes of 20 communicating which buckets those would fall 21 in, whether it k keyBank or Freddie. 22 Q. Are you swere that the 23 Loan Agreement contained representations and 24 warranties? 25 A. Yes, sir. 26 A. Yes, a the time it would have 27 been primarily D.C. Sauter. And then— 38 Q. Oxidy you spell that? 39 A. Sure. It's just the initials D, 30 (Rik yo) goly spell that? 40 Q. And who was D.C. Sauter a 41 degreement bar related to the subsidiaries? 41 degreement contained representations and 42 derived the communications were 43 defined a to the subsidiaries of the restructure, a 41 degreement contained representations and 42 derived the subsidiaries of the restructure, a 43 bilips and warranties and, in perticular, the representations and 44 warranties in the Loan Agreement that related to the subsidiaries as they're reflected on 45 Schadula 3.15 to the subsidiaries as they're reflected on 45 Schadula 3.15 to the subsidiaries as they're reflected on 46 Schadula 3.15 to the subsidiaries as they're reflected on 47 been primarily D.C. Sauter. And then— 48 Q. Oxley, Boyou know tho to the subsidiaries as they're reflected on 49 Schadula 3.15 to the subsidiaries and warranties on the Loan Agreement relating to the subsidiaries? 50 A. Yes, sir. 51 Q. And who was D.C. Sauter a 52 Q. D. Orley, you speak to	_	Page 66			Page 67
3 A. That's correct. 4 Q. Okay, Can you describe the 5 conversations that Wick Phillips had with 6 HCRE concerning the organization charts that 7 are attached to —as Schedule 3.15 to the 8 Loan Agreement? 9 A. Generally, yes. To get an 10 undestanding of what the structure was for 11 each of the properties so that we could 12 socurately communicate that to the lender: 13 Q. Okay, Can you give me any more 14 detail as to what those communications were 15 beyond what you just testified to? 16 A. You know, it would—sort of like 17 we had just labled about, it would be whether 18 it was going to be part of the restructure. a 19 DST structure, you know, for purposes of 20 communicating which buckets those would fall 21 in, whether 18 knylsanic or Freddie. 22 Q. Are you aware that the 23 Loan Agreement contained representations and 24 warranties and, in particular, the 17 Wick Phillips ad those of soussions relating to 4 to diligenous on behalf of any of its clients in 9 connection with the Loan Agreement to 10 determine if the representations and 11 warranties in the Loan Agreement that related 11 varranties in the Loan Agreement that related 12 to the subsidiaries were true and accurate? 13 A. Diligenous on behalf of any of its clients in 14 determine if the representations and 15 on A you draw that the structure was for 16 A. You know, flowud be whether 18 it was going to be part of the restructure, a 19 DST structure, you know, for purposes of 20 communicating which buckets those would fall 21 in, whether 18 knylsanic or Freddie. 22 Q. As you aware that the 23 Loan Agreement contained representations and 24 warranties; 25 A. Yes, sir. 26 A. Yes, sir. 27 Loan Agreement contained representations and 28 with the Loan Agreement contained representations and 29 warranties; 20 Q. Solay, Doyou know who 21 Wick Phillips Soloby(6) - R. Willis 22 Q. Ckay, Doyou know who 23 Loan Agreement or Helpinal Representations and warranties in the Loan Agreement relating to 29 the designation of the subsidiantes? 20 A. Sauter, Sea-t-	1		1	Wick Phillips 30(b)(6) - R. Wills	Page 67
4 O. Okay. Can you describe the 5 conversations that Wick Phillips and with 6 HCRE concerning the organization charts that 7 are attached to – as Schedule 3.15 to the 8 Loan Agreement? 8 diligence on behalf of any of its clients in 9 connection with the Loan Agreement to 10 understanding of what the structure was for 10 understanding of what the structure was for 10 understanding of what the structure was for 11 each of the properties so that we could 12 accurately communicate that to the lender; 13 Q. Okay. Can you give me any more 14 detail as to what those communications were 14 detail as to what those communications were 15 beyond what you just teetified 10? 15 A. You know, it would – sout of like 16 A. You know, it would – sout of like 17 we had just talked about, it would be whether 18 it was going to be part of the restructure, a 19 DST structure, you know, for purposes of 20 communicating which buckets those would fall 21, in, whether 18 kNyBank or Freddie. 22 Q. Are you aware that the 22 Q. Are you aware that the 22 Q. Are you aware that the 23 Loan Agreement contained representations and 24 warranties? 24 communications? 25 A. Yes, sir. 26 A. Yes, sir. 27 A. Sauter, Sauter, And then – 24 C. Okay. Do you know who 25 A. Sure. It's just the initiats D, 10 like dog, C, like Charles. 10 Paul Broaddus, Freddy Chang, Mart McGraer, 17 C. Sauter, And then – 24 C. Okay. So the was the first the would have 24 the designated withers of the work of the subsidiaries, correct? 29 A. A Hand Ray work by the 5 to convending the reps and warranties in the Loan Agreement relating to 18 subsidiaries. 29 C. Okay. So you ware the subsidiaries as they're reflected on 19 Schedule 3.15? A. Ukids Phillips Sawyir that would have 24 the designated without have 24 diligence and so poil to that group of poople and the body of the properties of the propert	2	those charts, do you?	2	Q. And are you aware that those	
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9 A. Sure. It's just the initials D, 10 like dog, C, like Charles. 11 Q. Yep. 11 someone within the NexPoint or Highland team 12 hat had created those charts and could tell 13 Q. And who was D.C. Sauter a 14 representative of, what entity? 15 A. He was a partner at Wick Phillips. 16 Q. Oh, okay. So he was the 17 Wick Phillips lawyer that would have 18 diligenced – done the underlying work to 19 diligence the reps and warranties relating to 19 of folks we've been over, whether it was 10 Paul Broaddus, Freddy Chang, Matt McGraner, 11 someone within the NexPoint or Highland team 12 that had created those charts and could tell 13 us that they were accurate. 14 BY MR. BROWN: 15 Q. Okay. It's your understanding that 16 Wick Phillips made a determination that the 17 that's that comprise Schedule 3.15 and the 18 reps and warranties in the Loan Agreement 19 diligence the reps and warranties relating to 19 relating to those charts were true and 20 the subsidiaries, correct? 21 A. Yes, sir. 22 Q. Did you speak to him in connection 22 Q. And do you know if Wick Phillips 23 with your preparation for your testimony as 24 the designated witness of Wick Phillips? 24 diligence and spoke to that group of people	′	• •		-	
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24 the designated witness of Wick Phillips? 24 diligence and spoke to that group of people	1			•	
	I			-	
25 A. Yes, sir. We spoke yesterday. 25 you had identified earlier, Goetz, McGraner,	1	·			
	25	A. Yes, sir. vve spoke yesterday.	25	you nad identified earlier, Goetz, McGraner,	

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1	Page 70 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 71
2	Chang, and Broaddus, I believe were the	2	side of things on the Highland level, is what	
3	universe; is that correct?	3	handles the chain up, or the chart up. And	
4	MR. MARTIN: Objection, form.	4	so we would rely on their understanding of	
5	A. Yes, sir.	5	the chart and the accuracy of that chart.	
6	BY MR. BROWN:	6	Q. Okay. You said McGraner was	
7	Q. Okay. So of those four people,	7	speaking on behalf of NexPoint; is that	
8	did – how did Wick Phillips determine what	8	correct?	
9	hat those individuals were wearing when it	9	A. Yes, sir.	
10	spoke to them, i.e., were they speaking on	10		
11	behalf of HCRE or were they speaking on	11	speaking on behalf of NexPoint?	
12	behalf of Highland or were they speaking on	12		
13	behalf of some other borrower?	13	Q. Okay. Do you know whether McGraner	
14	MR. MARTIN: Objection, form.	14		
15	BY MR. BROWN:	15	any affiliation with Highland?	
1			, c	
16	Q. Do you understand the question,	16	A. I don't.	
17		17	Q. What about Geotz? Do you know if	
18	A. Yes. I can answer the question.	18	he had any affiliation with Highland?	
19	The Matt McGraner, Matt Goetz part	19	A. I don't know.	
20	of things is NexPoint. So they should	20	Q. And Wick Phillips understood, did	
21	communicate to us from the borrower level –	21	it not, that the lender under the	
22	I'm sorry, the SE Multifamily Holdings LLC	22	Loan Agreement would be relying on the reps	
23	level down, as we got down to the property	23	and warranties made by the borrower, correct?	
24	level.	24	A. Yes, sir.	
25	And then Paul Broaddus, on that	25	Q. And Wick Phillips understood that	
	Page 72			Page 73
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	an incorrect or false representation or	2	THE WITNESS: Yes.	
3	warranty was an event of default under the	3	BY MR. BROWN:	
4	Loan Agreement, correct?	4	Q. Okay. Have you seen that email	
5	A. Yes, sir.	5	before?	
6	Q. And the event of default could lead	6	A. Yes.	
7	to acceleration of the amounts due, correct?	7	Q. Who is Rachel Sam?	
8	A. Yes, sir.			
9		8	A. She is an attorney at	
1 -	MR. BROWN: Can we attach - or can	8 9	A. She is an attorney at Wick Phillips.	
10	MR. BROWN: Can we attach – or can we mark Exhibit D.	Ι.	Wick Phillips. Q. Okay. This email was sent by	
1		9	Wick Phillips.	
10	we mark Exhibit D. (Email chain, "RE: Project Unicom	9 10	Wick Phillips. Q. Okay. This email was sent by Rachel Sam?	
10 11	we mark Exhibit D. (Email chain, "RE: Project Unicom	9 10 11	Wick Phillips. Q. Okay. This email was sent by Rachel Sam? A. Yes, sir.	
10 11 12	we mark Exhibit D. (Email chain, "RE: Project Unicorn - Final Org Charts," with	9 10 11 12	Wick Phillips. Q. Okay. This email was sent by Rachel Sam? A. Yes, sir. Q. And you have seen it before?	
10 11 12 13	we mark Exhibit D. (Email chain, "RE: Project Unicom - Final Org Charts," with attachments, marked as Exhibit D.) MR. BROWN: Okay. So can we scroll	9 10 11 12 13	Wick Phillips. Q. Okay. This email was sent by Rachel Sam? A. Yes, sir. Q. And you have seen it before? A. Yes, sir.	
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1	Page 74 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 75	
2	this first email, says – I'm sorry, the	2	to the ownership interests in the LLC?		
3	first attachment refers to Governors Green.	3	A. Yes, sir.		
4	And this is either one of the	4	Q. Scroll down one more chart, please.		
5	charts attached to Schedule 3.15 in the	5	With respect to the attachment to		
6	Loan Agreement or some prior and very similar	6	Rachel Sam's email regarding Oak Mill		
7	version to it.	7	Apartments, again, would you agree that this		
8	Would you say that's accurate?	8	is either identical to the schedule attached		
9	MR. MARTIN: Objection, form.	9	as – to the chart attached for – to		
10	A. Yes, sir.	10	Schedule 3.15 or a virtually identical		
11	BY MR. BROWN:	11	version, and certainly identical with respect		
12	Q. And, again, on the org chart, as	12	to the reflection of the ownership interests		
13	with all of the org charts attached as	13	in the LLC?		
14	Schedule 3.15 that contain a reference to the	14	A. Yes, sir.		
15	LLC, this org chart provides that the	15	MR. BROWN: Okay. Scroll down		
16	ownership interests are 51 percent HCRE and	16	again. I think that's the end. Yeah.		
17	49 percent Highland, correct?	17	Okay.		
18	A. Yes, sir.	18	Let's go back to the email, the		
19	Q. And if we could scroll down to the	19	September 17 email.		
20	next org chart.	20	BY MR. BROWN:		
21	Again, this one is Stoney Ridge.	21	Q. Okay. So in her email, Ms. Sam is		
22	And would you agree that this is	22	writing or emailing to, if you look up to the		
23	either the same chart that's attached to –	23	"To" line, Matt McGraner, who you've		
24	as Schedule 3.15 or a virtually identical	24	referenced before. There are two – there's		
25	version and certainly identical with respect	25	an entry for him showing a Highland Capital		
1					
	Page 76			Page 77	
1	Page 76 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 77	
1		1 2	Wick Phillips 30(b)(6) - R. Wills conclusion or refresh your recollection as to	Page 77	
1	Wick Phillips 30(b)(6) - R. Wills	l _		Page 77	
2	Wick Phillips 30(b)(6) - R. Wills email address, correct?	2	conclusion or refresh your recollection as to	Page 77	
2 3	Wick Phillips 30(b)(6) - R. Wills email address, correct? A. Yes, sir.	3	conclusion or refresh your recollection as to whether or not Mr. Goetz was also a	Page 77	
2 3 4	Wick Phillips 30(b)(6) - R. Wills email address, correct? A. Yes, sir. Q. And you had previously testified	2 3 4	conclusion or refresh your recollection as to whether or not Mr. Goetz was also a representative of Highland Capital or	Page 77	
2 3 4 5	Wick Phillips 30(b)(6) - R. Wills email address, correct? A. Yes, sir. Q. And you had previously testified that you believed he was a representative of	2 3 4 5	conclusion or refresh your recollection as to whether or not Mr. Goetz was also a representative of Highland Capital or Highland?	Page 77	
2 3 4 5 6	Wick Phillips 30(b)(6) - R. Wills email address, correct?  A. Yes, sir.  Q. And you had previously testified that you believed he was a representative of NexPoint, correct?	2 3 4 5 6	conclusion or refresh your recollection as to whether or not Mr. Goetz was also a representative of Highland Capital or Highland?  A. No, sir. No, sir.	Page 77	
2 3 4 5 6 7 8	Wick Phillips 30(b)(6) - R. Wills email address, correct?  A. Yes, sir.  Q. And you had previously testified that you believed he was a representative of NexPoint, correct?  A. Yes, sir.  Q. Does this refresh your recollection or change your conclusions as to whether or	2 3 4 5 6 7	conclusion or refresh your recollection as to whether or not Mr. Goetz was also a representative of Highland Capital or Highland?  A. No, sir. No, sir.  Q. I want to make sure the record is correct. I meant to just say Highland because we've defined the Debtor as Highland.	Page 77	
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Days 70	-	D 70
Page 78  1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 79
2 A. Yes, sir.	2 changes to the DST org charts and am	
3 Q. Do you know whether Mr. Broaddus is	3 waiting for signoff from	
4 a representative of Highland?	4 Baker McKenzie. Once I hear back from	
5 A. I believe that's correct.	5 Baker, I will circulate those updated	
6 Q. Okay. And also Freddy Chang, who I	6 org charts."	
7 believe you also referenced, with a	7 So you, I believe, testified	
8 Highland Capital email address.	8 earlier that Wick Phillips didn't make any	
9 Do you know who Freddy Chang is a	9 changes to the org charts. Does this refresh	
10 representative of?	10 your recollection as to whether or not	
11 A. I believe he's NexPoint, some sort	11 Wick Phillips made changes to the org charts?	
12 of in-house counsel role.	12 A. Yeah. It looks like Rachel may	
13 Q. Okay. And do you know why he has a	13 have cleaned up some typos that she got from	
14 Highland Capital email address?	14 DST counsel.	
15 A. No, sir.	15 Q. Does this refer to typos?	
16 Q. Okay. And the cc is to D.C. Sauter	16 A. "Clean up" is what I would	
17 of Wick Phillips, correct?	17 interpret as typo.	
18 A. Yes, sir.	18 Q. You're assuming that clean up means	
19 Q. And other than D.C. Sauter, there	19 typo?	
20 are no other outside lawyers that are on –	20 A. Yes, sir.	
21 that are recipients of this email, correct?	21 Q. But you don't know, do you?	
22 A. That's correct.	22 A. I do not.	
23 Q. So this email by Rachel Sam, the	23 Q. So, for example, you don't know	
24 Wick Phillips lawyer says:	24 whether the changes related to substance, do	
25	25 you?	
Thicke a souple of dealt up	20 you.	
Page 80	1 Wick Phillins 30(h)(6) - R Wills	Page 81
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 81
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1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	1 age 00
2	from Freddy Chang with a Highland Capital	2	"The only remaining question is	
3	email address, to Rachel Sam, again,	3	whether we will be converting or	
4	regarding the final org charts. And it's	4	merging the borrower-level DST owner	
5	Freddy Chang asking, "Are the DST org charts	5	entities. The org charts currently	
6	ready to go?" Asking Rachel.	6	reflect that the owner entities 'may	
7	Have you seen this before?	7	be converted."	
8	A. Yes, sir.	8	Is that a is that a substantive	
9	Q. And is this an email that was	9	question regarding the structure of the	
10	received by Wick Phillips?	10	subsidiaries, in your opinion?	
11	A. Yes, sir.	11	A. A substantive question from	
12	Q. Okay. Next email.	12	Q. Yeah. I mean, you said all that	
13	This appears to be Rachel Sam's	13	was done was typos and passing on, you know,	
14	response to Freddy Chang's prior email at	14	information that other people provided. You	
15	7:45. It's like seven minutes later, at	15	said that that was all Wick Phillips did.	
16	7:52, from Rachel Sam to Freddy Chang,	16	But here, this email seems to ask a	
17	copying D.C. Sauter.	17	substantive question regarding converting or	
18	Have you seen this email before?	18	merging borrower-level DST owner entities.	
19	A. Yes, sir.	19	MR. MARTIN: Objection, form.	
20	Q. And was this email sent by	20	A. Yes, sir. Again, we're at this	
21	Wick Phillips?	21	point a conduit between Baker McKenzie, DST	
22	A. Yes, sir.	22	counsel, REIT counsel, and – Rachel is	
23	Q. And in response to Mr. Chang's	23	simply reiterating the outstanding item for	
24	inquiry to Rachel Sam if the DST org charts	24	Baker McKenzie to complete on the org chart	
25	were ready to go, Rachel says:	25	so we can accurately deliver that to Freddie	
	Page 84			Page 85
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	Mac.	2	A. I'm not certain. I just know	
3	BY MR. BROWN:	3	they're DST counsel on the Highland side.	
4	Q. Is Baker McKenzie on any of these	4	<ul><li>Q. Delaware Statutory Trust counsel;</li></ul>	
5	emails?	5	it's your understanding that that's who they	
6	A. Yes, sir. The first one we looked	6	represented?	
7	at.	7	A. Yes, sir.	
8	Q. The initiating email by Rachel Sam	8	(Telephonic interruption.)	
9	of September 17, 2018?	9	Q. Okay. Let's go back to where we	
10	A. Yes, sir.	10	were, the September 18 email, "The only	
11	MR. BROWN: Okay. Let's scroll	11	remaining question."	
12	I must be missing something. Let's	12	Okay. Scroll up one email. Okay.	
13	scroll to the bottom. There. That	13	And this is a September 18 email, again, one	
14	email.	14	minute after Rachel's email at 7:52, from	
15	BY MR. BROWN:	15	Freddie Chang to Rachel Sam copied to	
16	Q. Can you point to the Baker McKenzie	16	D.C. Sauter. And it's Rachel Sam saying:	
17	recipient for me?	17	"Thanks. Are you working on the	
18	A. No. I'm sorry. I may have been	18	REIT share acquisition org charts?"	
19	speaking past you. I'm referencing the	19	And the only question I have for	
20	substance of the email.	20	you on that, Mr. Wills, is did Wick Phillips	
21	Q. Oh, I see. Okay. "I'm waiting for	21	receive that email?	
22	signoff from Baker McKenzie."	22	A. Yes, sir.	
23	Okay. I got it.	23	Q. Okay. And scroll up to	
24	And who did Baker McKenzie	24	Rachel Sam's response.	
1 ~-	represent?	25	Rachel Sam responds four minutes	
25	Торгосоти		radio da mosponado roa minatos	

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Wick Phillips 30(b)(6) - R. Wills   Page 87	D.	2000 96	Page 87
3   Sack on the screen. And let's go to the			rage or
4 bottom of the initiating email.  5 those" – being the RET share  6 acquisition charts – "are attached.  7 Paul has previously reviewed and 8 approved these, but let us know if you 9 have any comments."  9 discussed in more general, which I have 9 discussed in more general terms.  10 But Rachel Sam is communicating 11 email?  12 A. Yes. 13 Q. Do you know who Paul is? 14 A. I believe Paul Broaddus. 15 MR. RROWN: Okay. So ifs now 16 about an hour from the lest time we look 17 a break, and I would like to take a 18 five-minute break, if that's okay with 19 evenybody.  10 MR. MARTIN: It's your deposition.  11 Sure.  12 MR. RROWN: All right. Lef's 19 convenion about five minutes.  20 MR. MARTIN: Clay. Thank you.  21 Sure. 22 MR. RROWN: All right. Lef's 23 reconvers in about five minutes.  24 MR. MARTIN: Okay. Thank you.  25 (Recess taken.)  1 Wick Phillips 30(b)(6) - R. Wills 2 And I'm interested in Wick 3 Hillips knowledge and not your speculation. 4 A. Sure. So from our knowledge, 5 Helpfand. And there's a shared services 6 Freedy Chang are NeoFort. Paul Broaddus is 7 Highland. And there's a shared services 8 agreement between the two companies, and so 9 they're operating somewhat together.  10 Q. In other words, Highland and 10 A. Yes, sir.  11 NosePoint are operating together; is that what 12 your mean?  12 A. Yes, sir.  13 A. Yes, sir.  14 Q. And are any of these individuals 15 that constraints and some what together. 16 The work that Wick Phillips did in 17 Connection with its communicating with in lead borrower in 18 A. Loan't know. 19 Q. Would Wick Phillips have been 20 communicating with the lead borrower in 20 communicating with the lead borrower in 21 connection with its communications verified and in 22 to the Loan Agreement? 23 Condition with sits communications verified in 24 Conditions are previously and are delivering 25 Continuously and the lead borrower in 26 Conditions with your what other work 27 Condition with sits communications verified in 28 Lynain Link the lead borrower in 29 Condition with	2 later, at 7:57, to the inquiry by	2 MR. BROWN: So let's get Exhibit D	
5 MYR. BROWN: 6 acquisition charts – "are attached. 7 Paul has previously reviewed and 8 approved these, but let us know if you 1 have any comments." 9 of docus on these emails in particular, as 1 opposed to more generally, which I have 9 discussed in more general terms. 10 So did Wick Phillips receive this 11 email? 11 email? 12 A. Yes. 13 Q. Do you know who Paul is? 14 A. I believe Paul Broaddus. 15 MR. BROWN: Okay. So it's now 16 about an hour from the last time we took 16 about an hour from the last time we took 16 about an hour from the last time we took 17 believe and Broaddus. 18 five-minute break; if that's okay with 19 even-protoy. 10 MR. BROWN: All right. Let's 10 Does Wick Phillips have knowledge 11 Sure. 12 MR. BROWN: All right. Let's 13 address. Banner Malphand Capital email address, and 14 email address. Bonner Milphand Capital email address, and 15 the eminute break; if that's okay with 16 about an hour from the last time we took 16 with the Highland Capital email address, and 17 Freddy Chang with the Highland Capital email address, and 18 five-minute break; if that's okay with 19 even-protoy. 10 MR. BROWN: All right. Let's 10 Does Wick Phillips have knowledge 11 work make the woo mention and the stream was a finished the sea individuals in? 12 Sure. 13 Individuals in? 14 Wick Phillips 30(b)(6) - R. Wills 15 And I'm interested in Wick 16 A. No, sir. 17 Highland. And there's a shared services 18 agreement between the two companies, and so 19 they're operating somewhat together. 10 Q. In other words, Highland and 11 Work Phillips and presenting operher is that what 12 you mean? 13 You mean? 14 A. Yes, sir. 15 that Rachel Sam was communicating with in 16 these emails, are they representative of 17 HCRE, the lead borrower? 18 A Lond with scommunications relating 19 Q. Would Wick Phillips have been 19 Communication with the loan Agreement? 20 Communication with the loan Dopose and are delivering	3 Freddie Chang:	3 back on the screen. And let's go to the	
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7 fo focus on these emails in particular, as a approved these, but let us know if you have any comments." 9 discussed in more generally, which I have 9 discussed in more generally which I have 9 discussed in more general lemis. 10 So did Wick Phillips receive this 10 But Rachel Sam is communicating 11 email? 11 email? 12 A. Yes. 11 here with the people on the To'l line: 12 Matt McGraner with the Highland Capital email address, Matt Goetz with the Highland Capital email address, Matt Goetz with the Highland Capital email address, Bonner McDermett with the 16 mile of the work 15 Highland Capital email address, Bonner McDermett with the 16 mile of the work 16 about an hour from the last time we took 16 which the Highland Capital email address, and 18 five-minute break; if that's okay with 18 address. 19 Dese Wick Phillips have knowledge 19 everybody. 19 Dese Wick Phillips have knowledge 19 Dese Wick Phillips have knowledge 19 Dese Wick Phillips have knowledge 10 of the capacity that it was communicating 19 with these individuals in? 19 Dese Wick Phillips have knowledge 10 of the capacity that it was communicating 19 in these 19 of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the capacity that it was communicating 19 in the sea of the	5 those" being the REIT share	5 BY MR. BROWN:	
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21 Sure. 22 MR. BROWN: All right. Let's 23 reconvene in about five minutes. 24 MR. MARTIN: Okay. Thank you. 25 (Recess taken.)  26 (Recess taken.)  27 Wick Phillips 30(b)(6) - R. Wills 28 And I'm interested in Wick 29 And I'm interested in Wick 30 Phillips showledge and not your speculation. 4 A Sure. So from our knowledge, 5 Matt McGraner, Geotz, Bonner McDermett, and 6 Freddy Chang are NexPoint. Paul Broaddus is 7 Highland. And there's a shared services 8 agreement between the two companies, and so 9 they're operating somewhat together. 10 Q. In other words, Highland and 11 NexPoint are operating together; is that what 12 you mean? 13 A. Yes, sir. 14 Q. And are any of these individuals 15 that Rachel Sam was communicating with in 16 these emails, are they representatives of 17 HCRE, the lead borrower? 18 A. I don't know. 19 Q. Would Wick Phillips have been 10 communicating with the lead borrower in 20 C. Do you know who were these 21 individuals representing in these 22 individuals representing in these 23 individuals representing in these 24 individuals representing in these 25 communications, which entities?  10 Wick Phillips 30(b)(6) - R. Wills 2 A. I believe he's an attorney with 3 Highland. 4 Q. Do you know why he wasn't included 4 Q. Do you know why he wasn't included 5 on these emails? 6 A. No, sir. 7 Q. And this email string, which is 8 Exhibit D, this relates to Wick Phillips' 9 work on the Loan Agreement, correct? 10 A. Yes, sir. 11 Q. And did these emails reflect some 12 of the work that Wick Phillips did in 13 connection with the Loan Agreement? 14 A. Yes, sir. 15 Q. Other than what's reflected in 16 these emails, are they representatives of 17 Wick Phillips did relating to the org charts 18 that constitute Schedule 3.15 of the 19 Q. Would Wick Phillips have been 20 communicating with the lead borrower in 21 connection with its communications relating 22 to the Loan Agreement? 23 A. I would assume so. 24 Q. Do you know who Mark Patrick was or	19 everybody.	19 Does Wick Phillips have knowledge	
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# Casse 119-334054-sgjj111 Doloo2835910-1812ed E104011120127/12121ter End 12-0401112012712324137913:145age 12-5sof Exhibit 82 Page 28 of 126

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Page 90  1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 91
2 business parties, and then, therefore, we can	2 marked as Exhibit E.)	
3 get them to Freddie or KeyBank or whomever	3 BY MR. BROWN:	
4 needs to have those and then have them	4 Q. Okay. Exhibit E appears to be an	
5 checked off of the diligence portion of the	5 August 18, 2018 [sic] email from	
6 checklist.	6 Paul Broaddus; is that correct?	
7 BY MR. BROWN:	7 A. Yes, sir.	
8 Q. In connection with the org charts	8 Q. And have you seen this email	
9 that show up as Schedule 3.15 of the	9 before?	
10 Loan Agreement, who was Wick Phillips taking	10 A. Yes, sir.	
11 instructions from on behalf of the borrowers?	11 Q. Before or after your designation?	
12 A. I think primarily the parties you	12 A. After.	
, , , , ,		
13 see here, both from The NexPoint side and	1	
14 Mr. Broaddus.	14 with your preparation for your testimony	
15 Q. On the Highland side?	15 today?	
16 A. Yes, sir.	16 A. Yes, sir.	
17 Q. Other than this email, are you	17 Q. And it appears that there are a	
18 aware of other – I'm sorry. Other than this	18 number of recipients to this. One of them is	
19 email string, are you aware of other	19 D.C. Sauter; is that right?	
20 communications between Wick Phillips and any	20 A. Yes, sir.	
21 of the borrowers concerning the org charts?	21 Q. So Wick Phillips did receive this	
22 A. No, sir.	22 email from Paul Broaddus, correct?	
23 MR. BROWN: Can we put Exhibit E up	23 A. Yes, sir.	
24 on the screen, please.	24 Q. And Paul Broaddus is – as you have	
25 (Email chain, "RE: Unicorn - DSTs",	25 previously testified, was a representative of	
Page 92		Page 93
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	
2 Highland in connection with Wick Phillips'	2 Okay. So let's the first page	
3 role representing the borrowers in the	3 of the attachment says "Open items:	
4 Loan Agreement, correct?	4 Economics/ownership of JV LLC."	
5 A. Yes, sir.	5 Do you know what that refers to?	
6 Q. And the initiating email of	6 A. Not specifically, no.	
7 July 27, the first email in the string, which	7 Q. Okay. Could we scroll to the next	
8 is the second email on Exhibit E,	8 page of the attachment to Paul Broaddus'	
9 indicates – it says:	9 email. No. We can	
10 "Hi. Please see attached as	10 Have you seen the attachments	
11 discussed for the basic DST charts.	11 before, Mr. Wills?	
12 Please note the open items.	12 A. Yes, sir.	
13 "Should we have a call next week?	13 Q. Okay. Let's scroll to the next	
14 "Want to specifically discuss the	14 page.	
15 items that will need to be closed	15 Okay. This attachment reverts to	
16 out sooner rather than later.	16 the ownership interests of a JV – of the JV	
17 "Thanks. Paul."	17 LLC, which was referred to in the first	
18 So, again, did Wick Phillips	18 document as being – to be determined, but	
19 receive this email?	19 approximately 51 percent for Partner 1 and	
20 A. Yes, sir. It looks that way.	20 49 percent for Partner 2.	
21 Q. As well as the attachments,	21 Do you know whether this is	
22 correct?	22 referring to the LLC, which is the subject of	
23 And maybe we should look at the	23 the, I think, Exhibit D in our case here?	
24 attachments too. So if we could scroll	, ,	
25 further.	25 Is that what this refers to?	

# Casse 119-334054-sgjj111 Dolook835910-1812ed E104011120127/12121ter End t2-0401112012712324137913:145ge 126sof Exhibit 82 Page 29 of 126

		5 05
Page 9 1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 95
2 A. That's what it looks like. Yes,	2 refers to the ownership interests of the	
3 sir.	3 to-be-formed LLC Agreement, ultimately v	vhich
4 Q. Yeah. And just to go back and	4 became SE Multifamily Holdings LLC, cor	
5 trace the history, the SE Multifamily	5 A. Yes, sir.	
6 Holdings LLC Agreement was dated August 23.	6 Q. And it reflects the same ownership	)
7 The email that this was attached to is dated	7 interests as we saw in Schedule 3.15 to the	
8 August 1. So this would have been – this	8 Loan Agreement and in the LLC Agreeme	
9 email would have been sent prior to the	9 correct?	,
10 original LLC Agreement.	10 A. Yes, sir.	
11 And this would have been the	11 Q. Okay. Next chart.	
12 discussions about the formation of it,	12 That's not sufficiently legible to	
13 correct?	13 me. Let's see. Yeah. I think we can pas	0
	14 on this.	5
14 A. Yes, sir.		
15 Q. Okay. Can we scroll to the next	15 Do you have any idea what these	
16 page.	16 represent?	
17 And, again, this chart called DST	17 MR. MARTIN: Objection, form.	
18 Properties LLC reflects ownership interest of	18 A. It's tough to make it out, but – I	
19 Partner 1 at 51 percent and Partner 2 at	19 don't know if this is the structure that	
20 49 percent for the LLC to be formed, correct,	20 Starwood had, who was the owner of the	
21 which subsequently we learned was the SE	21 portfolio, and they're just reflecting that,	
22 Multifamily Holdings LLC Agreement, correct?	22 or if this is a proposed structure for the	
23 A. Yes, sir.	23 acquisition itself.	
24 Q. Okay. Can we scroll forward again?	24 BY MR. BROWN:	
25 Again, this is another chart that	25 Q. And this is Highland263748,	
Page :		Page 97
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	
2 correct?	2 Keep going. Keep going.	
3 A. Yes, sir.	3 Okay. One more – okay. One mo	re.
4 Q. Of Exhibit E.	4 This is a different format. Do you	
5 A. Correct.	5 know how this is different from the	
6 Q. Okay. Next chart, please.	6 other charts?	
7 And, again, this would be	7 A. I don't know why. It just looks	
8 Highland263749.	8 like a different structure.	
9 Do you know what this is?	9 Q. Okay. Let's go back to the	
10 A. Similarly, it's tough to tell, but	<ul><li>9 Q. Okay. Let's go back to the</li><li>10 original email.</li></ul>	
·		
10 A. Similarly, it's tough to tell, but	10 original email.	
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing	<ul><li>10 original email.</li><li>11 Hold on a second. It says</li></ul>	
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the	<ul> <li>10 original email.</li> <li>11 Hold on a second. It says</li> <li>12 K&amp;E Draft on all of these charts.</li> </ul>	
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition.	<ul> <li>10 original email.</li> <li>11 Hold on a second. It says</li> <li>12 K&amp;E Draft on all of these charts.</li> <li>13 What does that mean?</li> </ul>	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750.	<ul> <li>10 original email.</li> <li>11 Hold on a second. It says</li> <li>12 K&amp;E Draft on all of these charts.</li> <li>13 What does that mean?</li> <li>14 A. I believe Kirkland &amp; Ellis.</li> </ul>	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is?	<ul> <li>original email.</li> <li>Hold on a second. It says</li> <li>K&amp;E Draft on all of these charts.</li> <li>What does that mean?</li> <li>A. I believe Kirkland &amp; Ellis.</li> <li>Q. Okay. And were these generated do you know, the seller – the potential</li> </ul>	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure.	<ul> <li>original email.</li> <li>Hold on a second. It says</li> <li>K&amp;E Draft on all of these charts.</li> <li>What does that mean?</li> <li>A. I believe Kirkland &amp; Ellis.</li> <li>Q. Okay. And were these generated do you know, the seller – the potential</li> </ul>	l by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for	<ul> <li>original email.</li> <li>Hold on a second. It says</li> <li>K&amp;E Draft on all of these charts.</li> <li>What does that mean?</li> <li>A. I believe Kirkland &amp; Ellis.</li> <li>Q. Okay. And were these generated do you know, the seller — the potential</li> <li>seller of the assets to the limited — to the</li> <li>LLC?</li> </ul>	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for 19 263751?	<ul> <li>original email.</li> <li>Hold on a second. It says</li> <li>K&amp;E Draft on all of these charts.</li> <li>What does that mean?</li> <li>A. I believe Kirkland &amp; Ellis.</li> <li>Q. Okay. And were these generated do you know, the seller – the potential</li> <li>seller of the assets to the limited – to the</li> <li>LLC?</li> <li>A. Yes, sir. I believe this was the</li> </ul>	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for 19 263751? 20 A. Yes, sir. It just looks like the	<ul> <li>original email.</li> <li>Hold on a second. It says</li> <li>K&amp;E Draft on all of these charts.</li> <li>What does that mean?</li> <li>A. I believe Kirkland &amp; Ellis.</li> <li>Q. Okay. And were these generated do you know, the seller – the potential</li> <li>seller of the assets to the limited – to the</li> <li>LLC?</li> <li>A. Yes, sir. I believe this was the</li> <li>existing structure in place.</li> </ul>	l by,
A. Similarly, it's tough to tell, but more of the same if that was the existing structure of the asset at the time of the acquisition.  Q. Next chart, please. This is 263750. Again, do you know what this is? A. Same thing, existing structure. Q. Next chart. Same answer for 263751? A. Yes, sir. It just looks like the underlying property or asset changes. But,	10 original email. 11 Hold on a second. It says 12 K&E Draft on all of these charts. 13 What does that mean? 14 A. I believe Kirkland & Ellis. 15 Q. Okay. And were these generated do you know, the seller — the potential 17 seller of the assets to the limited — to the 18 LLC? 19 A. Yes, sir. I believe this was the 20 existing structure in place. 21 Q. I see.	i by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for 19 263751? 20 A. Yes, sir. It just looks like the 21 underlying property or asset changes. But, 22 yes, sir.	10 original email. 11 Hold on a second. It says 12 K&E Draft on all of these charts. 13 What does that mean? 14 A. I believe Kirkland & Ellis. 15 Q. Okay. And were these generated do you know, the seller – the potential 17 seller of the assets to the limited – to the 18 LLC? 19 A. Yes, sir. I believe this was the 20 existing structure in place. 21 Q. I see. 22 A. At the time.	ł by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for 19 263751? 20 A. Yes, sir. It just looks like the 21 underlying property or asset changes. But, 22 yes, sir. 23 Q. Okay. Next chart.	10 original email. 11 Hold on a second. It says 12 K&E Draft on all of these charts. 13 What does that mean? 14 A. I believe Kirkland & Ellis. 15 Q. Okay. And were these generated do you know, the seller – the potential relation of the assets to the limited – to the LLC? 19 A. Yes, sir. I believe this was the existing structure in place. 21 Q. I see. 22 A. At the time. 23 Q. Okay. Let's go back to the	l by,
10 A. Similarly, it's tough to tell, but 11 more of the same if that was the existing 12 structure of the asset at the time of the 13 acquisition. 14 Q. Next chart, please. This is 15 263750. 16 Again, do you know what this is? 17 A. Same thing, existing structure. 18 Q. Next chart. Same answer for 19 263751? 20 A. Yes, sir. It just looks like the 21 underlying property or asset changes. But, 22 yes, sir.	10 original email. 11 Hold on a second. It says 12 K&E Draft on all of these charts. 13 What does that mean? 14 A. I believe Kirkland & Ellis. 15 Q. Okay. And were these generated do you know, the seller – the potential 17 seller of the assets to the limited – to the 18 LLC? 19 A. Yes, sir. I believe this was the 20 existing structure in place. 21 Q. I see. 22 A. At the time.	l by,

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1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	1 age 55
2 Paul Broaddus, the July 27 email and the	2 2018, correct?	
3 August 1 email that constitute Exhibit E,	3 A. Yes, sir.	
4 they were sent and received by D.C. Sauter of	4 Q. And is this a true copy of that,	
5 Wick Phillips, correct? They were sent to	5 this Agreement?	
6 and received by D.C. Sauter?	6 A. It looks to be so, yes, sir.	
7 A. Yes, sir.	7 MR. BROWN: Let me just digress for	
8 Q. And do you know if Wick Phillips	8 a moment.	
9 ever responded to these emails in any way?	9 Lauren, we had agreed by emails	
10 A. I don't believe so.	10 that the documents attached to both	
11 Q. Okay. Did Wick Phillips have any	11 declarations, the Morris declaration and	
12 communications with Paul Broaddus relating to	the McGraner declaration, that we could	
13 the charts attached on these emails?	13 stipulate to their authenticity.	
14 A. Not other than what we previously	14 MS. DRAWHORN: Yes.	
15 discussed.	15 MR. BROWN: So with respect to	
16 Q. Okay. Let's move on to Exhibit F.	16 Exhibit B to this deposition, the	
17 (SE Multifamily Holdings LLC First	17 original LLC Agreement, the	
18 Amended and Restated Limited	18 Loan Agreement, I believe, which is	
19 Liability Company Agreement, marked	19 Exhibit C, and this Loan Agreement,	
20 as Exhibit F.)	20 Exhibit F, the Amended and Restated	
21 BY MR. BROWN:	21 Limited Liability Agreement, we're	
22 Q. So Exhibit F is the SE Multifamily	22 agreeing that they're authentic.	
23 Holdings LLC First Amended and Restated	23 We're reserving whatever other	
24 Limited Liability Company Agreement, dated as	24 objections, but nobody – we're agreeing	
25 of March 15, 2019, to be effective August 23,	25 as to authenticity. So I'm not going to	
	, 3 3	
Page 100  1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills	Page 101
2 worry about dealing with that in this	2 as well.	
3 deposition.	3 (Email chain, "FW: Draft LLC	
4 Is that agreed, they're authentic?	4 Agreement," marked as Exhibit H.)	
5 MS. DRAWHORN: Yes. That's agreed.	5 BY MR. BROWN:	
6 BY MR. BROWN:	6 Q. Okay. So you had referred to BH in	
7 Q. Okay. So tell me what this	7 your testimony you just gave.	
8 document is, Mr. Wills.	8 And if you look at Schedule A to	
9 A. Sure. It's the Amended and	9 the Amended LLC Agreement, it provides the	
10 Restated LLC Agreement for SE Multifamily	10 capital contributions and percentage	
11 Holdings. My understanding in talking to	11 interest, correct?	
12 D.C. Sauter was that KeyBank retraded us at	12 A. Correct.	
13 the last minute and pulled back some of the	13 Q. And is this Schedule A, the chart	
14 previously committed funds, and so we were	14 on Schedule A reflecting current – the	
15 short about 20 million, which is why we	15 percentage interest, is that what you were	
16 needed to bring in additional equity.	16 referring to in terms of changing the	
17 There was a previous relationship	17 ownership interest?	
18 with BH on some prior multifamily deals, and	18 A. Yes, sir.	
19 so BH came in as the bridge equity, for lack	19 Q. And is that an accurate statement	
	<ul><li>20 regarding the ownership interest of the</li><li>21 parties?</li></ul>	
21 changed and it's memorialized here.	·	
22 Q. Do you know where they're	22 A. I believe it accurately shows the	
23 memorialized in the Agreement? And I can	23 BH portion, and on the remainder, I'm not	
24 tell you if we flip to Schedule A.	24 positive.	
25 A. Yes, sir. That's where I was going	25 Q. Okay. Let me – let's back up a	

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	Page 102	1		Page 103
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	rage 103
2	little bit.	2	did those communications take?	
3	Did what was Wick Phillips' role	3	A. I would assume telephonic or email.	
4	in connection with the Amended and Restated	4	MR. BROWN: Hayley, are you on the	
5	Limited Liability Company Agreement that's	5	call?	
6	Exhibit E?	6	MS. WINOGRAD: Yes. I'm here.	
7	Let's just I'm going to try to	7	MR. BROWN: I have not seen and I	
8	make it simple.	8	don't know if I don't think we've	
9	Like we referred to the original	9	received any communications between	
10	Agreement in this deposition as the	10	Wick Phillips and KeyBank relating to	
11	LLC Agreement, can we refer to this as – if	11	the Amended LLC Agreement, have we?	
12	I refer to this as the Amended LLC Agreement,	12	MS. WINOGRAD: I haven't seen any,	
13	you'll understand I'm referring to Exhibit F,	13	no.	
14	correct?	14	BY MR. BROWN:	
15	A. Yes, sir.	15	Q. So I guess, Mr. Wills, it raises	
16	Q. Okay. So what was Wick Phillips'	16	the question, we've asked for documents –	
17	role in connection with the Amended		and maybe, Lauren, this is better addressed	
' '		17	•	
18	LLC Agreement?	18	to you –	
19	A. We did not have one, other than	19	MR. MARTIN: Yeah. Mr. Brown, I'll	
	delivering, you know, and communicating with	20	represent to you, we haven't found any	
21	KeyBank on the modified structure.	21	of those communications. I think	
22	Q. Okay. So I don't believe I have	22	Mr. Wills is mistaken on that.	
23	seen any – well, let me back up.	23	MR. BROWN: Okay.	
24	How were the communications with	24	MR. MARTIN: We're not withholding	
25	KeyBank on the modified structure? What form	25	anything, and if we were withholding	
	Page 104	1	Mick Dhilling 20/hVG\ D Mills	Page 105
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	something, we would have produced a	2	A. We did not have one.	
3	privilege log or some other grounds for	3	Q. You don't – let me ask you this:	
4	withholding. I'm never in the business	4	You indicated in your prior testimony that	
5	of withholding anything that you're	5	you believed there were communications with	
6	otherwise entitled to.	6	KeyBank regarding the Amended LLC Agreement.	
7	MR. BROWN: And I'm not accusing.	7	Why did you think that?	
8	I was just confused because –	8	A. Well, that has been the siloed role	
9	MR. MARTIN: I appreciate that.	9	that we've maintained throughout the	
10	MR. BROWN: I'm familiar with	10	Project Unicom transaction as sort of the	
11	the documents that were produced and	11	conduit in between the lender and the various	
12	I've looked at them fairly closely in	12	borrowers.	
13	this deposition and I never saw any	13	Q. Okay. So I think your counsel has	
14	communications between Wick Phillips and	14	represented that there were no emails between	
15	KeyBank.	15	Wick Phillips and KeyBank concerning the	
16	MR. MARTIN: Yeah. I think if you	16	Amended LLC Agreement.	
17	ran the tape back, you would probably	17	Are you aware of whether there were	
18	see both Ms. Drawhorn and I raise our	18	emails that took place in form - I'm sorry,	
19	eyebrows when Mr. Wills said that. I	19	whether there were communications that took	
20	think he was simply mistaken.	20	place in a form other than an email	
21	BY MR. BROWN:	21	communication?	
22	Q. Mr. Wills, in light of that	22	A. I'm not aware.	
23	discussion, let's talk about, again, what	23	Q. So is it true that Wick Phillips	
24	your understanding is of Wick Phillips' role	24	did not represent any party to the Amended	
25	in connection with the Amended LLC Agreement.	25	LLC Agreement?	
I		1		

# Casse 119-334054-sgjj111 Dolook835910-1812ed E104011120127/12121ter End t2-0401112012712324137913:145ge 12-05cof Exhibit 82 Page 32 of 126

Page 106	Dog 107
Page 106  1 Wick Phillips 30(b)(6) - R. Wills	Page 107  Wick Phillips 30(b)(6) - R. Wills
2 A. Correct. We did not prepare it or	2 other than that, I'm not aware of the
3 have anything to do with that agreement.	3 accuracy one way or the other.
4 Q. And is there any retention	4 Q. I'm not sure I understand what that
5 agreement with respect to the LLC Agreement?	5 means. Can you help me understand? When you
6 A. No, sir.	6 say, "they modified this with the intent of
7 Q. Do you know if Wick Phillips had	7 updating it prior to the distribution."
8 any communications with James Dondero in	8 Can you unpack that for me?
9 connection with the Amended LLC Agreement?	9 Because I don't understand what that means.
10 A. I do not.	10 Modified what?
11 Q. So let's focus again I think	11 A. Well, they added in the BH portion
12 that before we established that	12 and then, obviously, the HCRE contributions
13 Wick Phillips – your testimony that	13 and percentages and the Highland
14 Wick-Phillips had no role in connection with	14 contributions and percentages are different
15 the Amended LLC Agreement. We didn't	15 from the original LLC Agreement.
16 complete the questions with respect to your	16 Q. Okay. And they're – I mean, the
17 knowledge of the percentage interest set	17 math, I'm sure if you did it on a calculator,
18 forth in the Amended LLC Agreement.	18 it would reflect that these percentages are
19 So what is your understanding	19 modified from the original percentages, 49
20 concerning the accuracy of the percentage	20 and 51, based on a proportional pro rata
21 interest set forth in Schedule A to the	21 reduction for the 6 percent given to
22 Amended LLC Agreement?	22 BH Management, correct?
23 A. In speaking with D.C., I believe	23 A. Yes.
24 they modified this with the intent of	24 Q. Does Wick Phillips have any
25 updating it prior to any distribution. But	25 knowledge concerning whether or not the
	gg.
Page 108  1 Wick Phillips 30(b)(6) - R. Wills	Page 109  Wick Phillips 30(b)(6) - R. Wills
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills
1 Wick Phillips 30(b)(6) - R. Wills 2 percentages reflected in this Schedule A do	<ul><li>1 Wick Phillips 30(b)(6) - R. Wills</li><li>2 understanding on?</li></ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> </ol>	<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> </ol>
<ul> <li>1 Wick Phillips 30(b)(6) - R. Wills</li> <li>2 percentages reflected in this Schedule A do</li> <li>3 not accurately reflect what the parties</li> <li>4 intended?</li> </ul>	<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> </ol>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> </ol>	<ul> <li>1 Wick Phillips 30(b)(6) - R. Wills</li> <li>2 understanding on?</li> <li>3 A. Review of some material in</li> <li>4 connection with the deposition.</li> <li>5 Q. What material?</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> <li>the phone with you, so can we have a</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> <li>Q. So Mr. Wills, we've covered</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> <li>the phone with you, so can we have a</li> <li>separate phone call?</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> <li>Q. So Mr. Wills, we've covered</li> <li>Wick Phillips' involvement in the</li> </ul>
<ol> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> <li>the phone with you, so can we have a</li> <li>separate phone call?</li> <li>MS. WINOGRAD: Sure.</li> </ol>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> <li>Q. So Mr. Wills, we've covered</li> <li>Wick Phillips' involvement in the</li> <li>representation of the parties in connection</li> </ul>
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<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> <li>the phone with you, so can we have a</li> <li>separate phone call?</li> <li>MS. WINOGRAD: Sure.</li> <li>MR. BROWN: I'm going to put myself</li> <li>on mute and stop the video.</li> <li>And, Hayley, can you call me on my</li> <li>cell?</li> <li>MS. WINOGRAD: Yeah. I'll do that</li> <li>right now.</li> <li>(Recess taken.)</li> <li>BY MR. BROWN:</li> <li>Q. Do you know who represented HCRE</li> <li>and Highland in connection with the Amended</li> </ul>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> <li>Q. So Mr. Wills, we've covered</li> <li>Wick Phillips' involvement in the</li> <li>representation of the parties in connection</li> <li>with the Loan Agreement, correct?</li> <li>A. Yes, sir.</li> <li>Q. And Wick Phillips represented the</li> <li>borrowers in connection with the</li> <li>Loan Agreement, correct?</li> <li>A. Yes, sir.</li> <li>Q. And Wick Phillips communicated with</li> <li>both – with Highland, I think you've</li> <li>acknowledged through Paul Broaddus, with</li> <li>respect to the ownership interests in the LLC</li> </ul>
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<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>percentages reflected in this Schedule A do</li> <li>not accurately reflect what the parties</li> <li>intended?</li> <li>MR. MARTIN: Objection, form.</li> <li>A. I don't know.</li> <li>MR. BROWN: Okay. I'd like to take</li> <li>a brief recess.</li> <li>And, Hayley, I'd like to talk on</li> <li>the phone with you, so can we have a</li> <li>separate phone call?</li> <li>MS. WINOGRAD: Sure.</li> <li>MR. BROWN: I'm going to put myself</li> <li>on mute and stop the video.</li> <li>And, Hayley, can you call me on my</li> <li>cell?</li> <li>MS. WINOGRAD: Yeah. I'll do that</li> <li>right now.</li> <li>(Recess taken.)</li> <li>BY MR. BROWN:</li> <li>Q. Do you know who represented HCRE</li> <li>and Highland in connection with the Amended</li> </ul>	<ul> <li>Wick Phillips 30(b)(6) - R. Wills</li> <li>understanding on?</li> <li>A. Review of some material in</li> <li>connection with the deposition.</li> <li>Q. What material?</li> <li>A. Some of these exhibits.</li> <li>(Technical interruption, 1:29 p.m.</li> <li>to 1:34 p.m.)</li> <li>BY MR. BROWN:</li> <li>Q. So Mr. Wills, we've covered</li> <li>Wick Phillips' involvement in the</li> <li>representation of the parties in connection</li> <li>with the Loan Agreement, correct?</li> <li>A. Yes, sir.</li> <li>Q. And Wick Phillips represented the</li> <li>borrowers in connection with the</li> <li>Loan Agreement, correct?</li> <li>A. Yes, sir.</li> <li>Q. And Wick Phillips communicated with</li> <li>both – with Highland, I think you've</li> <li>acknowledged through Paul Broaddus, with</li> <li>respect to the ownership interests in the LLC</li> </ul>

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	Dana 444			Dana 444
1	Page 110 Wick Phillips 30(b)(6) - R. Wills	'   1	Wick Phillips 30(b)(6) - R. Wills	Page 111
2	A. I don't think that's accurate. We	2	outside the scope of the 30(b)(6)	
3	had – we communicated with Mr. Broaddus as	3	notice.	
4	it related to finalizing and forwarding the	4	And the record should probably	
5	org charts that are part of Schedule 3.15 to	5	reflect, Mr. Brown, I think you would	
6	the Loan Agreement.	6	agree with me, the court reporter lost	
7	BY MR. BROWN:	7	about five minutes' worth of testimony.	
8	Q. And those org charts contain a	8	So I appreciate the fact that	
9	reflection of the ownership interest as they	9	you're trying to go back through it	
10	appear on the LLC Agreement, correct?	10	methodically. I certainly don't want to	
11	A. Yes, sir. That's what they said.	11	get in the way with that. But we got	
12		12	-	
l	Q. And those org charts that were	13	into a scrap while she was offline about	
13	transmitted by Wick Phillips to		this and about what the scope of the	
14	Paul Broaddus, among others, reflect an	14	30(b)(6) deposition notice is.	
15	ownership interest of 51 percent in HCRE and	15	So we perhaps have to have that	
16	49 percent in Highland, correct?	16	discussion over again.	
17	A. Yes, sir.	17	MR. BROWN: Okay. Well, if you're	
18	Q. And the percentage interests that	18	instructing him not to answer –	
19	appear in Schedule A of the Amended	19	BY MR. BROWN:	
20	LLC Agreement reflect those same ownership	20	Q. Are you going to follow your	
21	interests adjusted for the addition of	21	counsel's instruction, Mr. Wills?	
22	BH Management as a 6 percent owner, correct?	22	A. Yes, sir.	
23	MR. MARTIN: Objection, form.	23	MR. BROWN: Okay.	
24	I'm going to instruct the witness	24	All right. I don't have any	
25	to not answer the question as being	25	further questions.	
	Page 11:			Page 113
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	MR. MARTIN: Okay. I've got a few	2	understand what you were saying. I	
3	questions.	3	thought you were saying we'd get back	
4	Are you passing the witness,	4	together at some point in the future.	
5	Mr. Brown?	5	MR. BROWN: No. I want the	
6	MR. BROWN: I'll pass the witness	6	opportunity to, essentially, redirect	
7	and reserve my right to reexamine.	7	after you –	
8	MR. MARTIN: Okay. Well, I guess I	8	MR. MARTIN: Recross after my	
9	should make it clear that we're going to	9	direct? Sure.	
10	ask you to petition the Court for a	10	Does anybody else have any	
11	reexamination because we presented	11	questions before I go? Ms. Dandeneau?	
12	Mr. Wills here and are giving you ample	12	MS. DANDENEAU: No, I do not.	
13	opportunity to ask questions.	13	MR. MARTIN: Okay. And I apologize	
14	MR. BROWN: Well, I may need to	14	if I tortured your name.	
15	clarify questions that you ask.	15	MS. DANDENEAU: You actually said	
16	MR. MARTIN: After the read and	16	it perfectly – well, pretty perfectly.	
17	sign, that would be standard procedure,	17	<del></del>	
18	and I would not disagree with that.	18	EXAMINATION	
19	MR. BROWN: Well, you're going to	19	BY MR. MARTIN:	
20	ask him some questions.	20	Q. Okay. Mr. Wills, most of my	
21	MR. MARTIN: Oh, I'm sorry. Yeah,	21	questions are going to be just follow-up to	
22	yeah. I'm sorry.	22	what Mr. Brown asked you.	
23	After me? Sure.	23	Who is it your understanding that	
24	MR. BROWN: That's what I mean.	23	Wick Phillips represented in connection with	
25	MR. MARTIN: Tapologize. Tdidn't	25	the Loan Agreement?	
20	ivii v. ivii vi ti i i i apologize. Tululti	23	the Loan Agreement:	

# Casse 119-334054-sgjj111 Dolook835910-1812ed E10401120127/12121er End t2040112012712324137913:145ge 134:sof Exhibit 82 Page 34 of 126

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1	Page 114 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 115
2	A. The borrowers.	2	Wick Phillips?	
3	Q. And of those, was there any	3	A. No, sir.	
4	representation Mr. Brown asked you a lot	4	Q. And who would have consulted with	
5	of questions about Highland being the lead	5	the client regarding Mr. Brown's questions	
6	borrower.	6	about the mechanics of the loan, who directed	
7	Do you remember that?	7	what, where the money was going, what the	
8	MR. BROWN: That's an incorrect –	8	role of the lead borrower was compared to the	
9	by the way, you're mischaracterizing.	9	other borrowers, etc.?	
10	It was HCRE, not Highland.	10	A. D.C. Sauter.	
11	MR. MARTIN: Okay. HCRE.	11	Q. Now, to your knowledge – and I'm	
12	BY MR. MARTIN:	12	just going to try to make all of this crystal	
13	Q. Did HCRE have its own counsel	13	clear. Because I think this is where the	
14	in-house or outside counsel?	14	fight with Mr. Brown is going to come in.	
ı				
15	A. No.	15	To your knowledge, did	
16	Q. Now, at Wick Phillips, at the time	16	Wick Phillips have anything to do with the	
17	of these transactions, who would have	17	formation of the LLC Agreement or the	
18	consulted with the client about possible	18	negotiation of the LLC Agreement?	
19	conflicts or waiver of conflicts that	19	A. No, sir.	
20	Mr. Brown was asking you about?	20	Q. Can you explain in	
21	A. D.C. Sauter.	21	non-real-estate-lawyer terms what the scope	
22	Q. Okay. And at the time, Mr. Sauter	22	of the representation was of Wick Phillips in	
23	was a partner at Wick Phillips, correct?	23	the matter at issue?	
24	A. Yes, sir.	24	A. Yes. Our – the scope of our	
25	Q. Is Mr. Sauter still a partner at	25	representation was at specifically the real	
	Page 116			Page 117
1	Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	
2	estate/property level, working with	2	just trying to get the record clear on	
3	essentially going through the	3	what you're asking him.	
4	lender required	4	MR. MARTIN: Are you finished?	
5	MR. BROWN: Can I just interpose	5	MR. BROWN: Yes.	
6	an – ask for clarification?	6	MR. MARTIN: I would ask you to	
7	You asked for Wick Phillips' role	7	keep your objections to the "objection,	
8	in the matter at issue.	8	form" called for by the Federal Rules of	
9	Could you clarify, please, what the	9	Civil Procedure. If I ask you for the	
10	matter at issue is that you're referring	10	basis, then you can make a speaking	
11	4-0	144	objection.	
	to?	11	objection.	
12	BY MR. MARTIN:	12	You are still trying to conflate	
12			-	
ı	BY MR. MARTIN:	12	You are still trying to conflate	
13	BY MR. MARTIN: Q. Mr. Wills, who has Wick Phillips	12 13	You are still trying to conflate all of these issues. I'm trying to	
13 14	BY MR. MARTIN:  Q. Mr. Wills, who has Wick Phillips represented while you're here today?	12 13 14	You are still trying to conflate all of these issues. I'm trying to separate them out to make them clear. I	
13 14 15	BY MR. MARTIN:  Q. Mr. Wills, who has Wick Phillips represented while you're here today?  A. NexPoint.	12 13 14 15	You are still trying to conflate all of these issues. I'm trying to separate them out to make them clear. I get to ask my questions, and if you want	
13 14 15 16	BY MR. MARTIN:  Q. Mr. Wills, who has Wick Phillips represented while you're here today?  A. NexPoint.  MR. BROWN: Again, I'm going to object. It's vague and ambiguous.	12 13 14 15 16	You are still trying to conflate all of these issues. I'm trying to separate them out to make them clear. I get to ask my questions, and if you want to come back and ask other questions,	
13 14 15 16 17	BY MR. MARTIN:  Q. Mr. Wills, who has Wick Phillips represented while you're here today?  A. NexPoint.  MR. BROWN: Again, I'm going to	12 13 14 15 16 17	You are still trying to conflate all of these issues. I'm trying to separate them out to make them clear. I get to ask my questions, and if you want to come back and ask other questions, you can.	
13 14 15 16 17 18 19	BY MR. MARTIN:  Q. Mr. Wills, who has Wick Phillips represented while you're here today?  A. NexPoint.  MR. BROWN: Again, I'm going to object. It's vague and ambiguous.  Do you mean with respect to the claim —	12 13 14 15 16 17 18 19	You are still trying to conflate all of these issues. I'm trying to separate them out to make them clear. I get to ask my questions, and if you want to come back and ask other questions, you can.  MR. BROWN: Thank you for the lecture and for the instructions on how	
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# Casse 119-334054-sgjj111 Dolook835910-1812ed E104011120127/12121ter End t2-0401112012712324137913:145ge 1342sof Exhibit 82 Page 35 of 126

D 110	D 440
Page 118  1 Wick Phillips 30(b)(6) - R. Wills	Page 119  Wick Phillips 30(b)(6) - R. Wills
2 addresses have Highland Capital in them?	2 those same – the structure charts are
3 A. Yes.	3 attached as an exhibit to the Loan Agreement.
4 Q. Did Wick Phillips form the LLC that	4 Q. I'm going to direct your attention
5 Mr. Brown asked you about today?	5 to the exhibits that Mr. Brown provided prior
6 A. No.	6 to this deposition and ask you to look at
7 Q. Did Wick Phillips draft or	7 Exhibit H.
8 negotiate the Amended LLC Agreement that	8 And you were in the room when we
9 Mr. Brown asked you about today?	9 became aware that the court reporter was
10 A. No.	10 offline for a little bit, correct?
11 Q. If, in fact, another law firm	11 A. Yes, sir.
12 drafted the LLC Agreement, would that be	12 Q. And if my memory of this is
13 consistent with your understanding of how the	13 correct, I think she was offline when
14 LLC was formed?	14 Mr. Brown asked you a couple of questions
15 A. Yes.	15 about Exhibit H.
16 Q. Regardless of who formed the LLC,	16 Do you remember that?
17 as a real estate lawyer, since Wick Phillips	17 A. Yes, sir.
18 was representing NexPoint and the borrowers,	18 Q. Can you please look at Exhibit H
19 would Wick Phillips had to have known the	19 and tell me, on the – that's an email string
20 ownership structure of the LLC in order to	20 starting on July 27, 2018, correct?
21 work on Project Unicom?	21 A. Yes, sir.
22 A. Yes.	Q. And who is the author of the first
23 Q. Why?	23 email in that chain?
24 A. So that we could accurately	24 A. Alexander McGeoch.
25 communicate that to KeyBank, and because	25 Q. And Mr. McGeoch's email signature
·	
Dags 120	Page 191
Page 120  1 Wick Phillips 30(b)(6) - R. Wills	Page 121  Wick Phillips 30(b)(6) - R. Wills
1 Wick Phillips 30(b)(6) - R. Wills	1 Wick Phillips 30(b)(6) - R. Wills
1 Wick Phillips 30(b)(6) - R. Wills 2 indicates he's a partner at Hunton Andrews	1 Wick Phillips 30(b)(6) - R. Wills
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_	Page 402			Dama 100
1	Page 122 Wick Phillips 30(b)(6) - R. Wills	1	Wick Phillips 30(b)(6) - R. Wills	Page 123
2	Q. When Mr. Brown asked you questions	2	A. There are no Wick Phillips' emails.	
3	about Mr. Wick Phillips' role in drafting the	3	MR. MARTIN: Okay. I'll pass the	
4	LLC Agreement, he didn't ask you about Hunton	4	witness.	
5	Andrews Kurth, did he?	5	MR. BROWN: Ms. Vosburgh, could you	
6	A. No, sir.	6	go back to the first question that	
7	(Email chain "RE: SE Multi-Family	7	Counsel asked on his set of questions of	
8	Holdings LLC: Amended and	8	Mr. Wills, to the first question, and	
9	Restated," beginning Bates	9	read it back to me.	
10	Highland136853, marked as Exhibit	10	THE REPORTER: (Reading back.)	
11	I.)	11	"Question: Okay. Mr. Wills, most	
12	BY MR. MARTIN:	12	of my questions are going to be	
13	Q. If you would, please, look at	13	follow-up questions to what	
14	Exhibit I.	14	Mr. Brown asked you.	
15		15	·	
	A. Okay.		"Who is it your understanding that	
16	Q. This is an email chain, several	16	Wick Phillips represented in	
17	pages long. And if we're going by the Bates	17	connection with the Loan Agreement?"	
18	numbers, from – starting on Highland136853	18	"Answer: The borrowers."	
19	through Highland136856.	19	MR. BROWN: Okay. There's a	
20	Do you see that?	20	question regarding the matter at hand.	
21	A. Yes.	21	That's the one I want read back.	
22	Q. Will you page through any of those	22	THE REPORTER: (Reading back.)	
23	emails and identify any email addresses from	23	"Question: Can you explain in	
24	Wick Phillips that are included in that	24	non-real-estate-lawyer terms what	
25	chain?	25	the scope of the representation was	
	Page 124	1	Wick Phillips 30(b)(6) - R. Wills	Page 125
1	Wick Phillips 30(b)(6) - R. Wills			
2	of Wick Phillips in the matter at		the question in connection with	
3	issue?"		Wick Phillips' role in connection with the	
4	THE REPORTER: Is that the one?		Loan Agreement then, were you?	
5	MR. BROWN: Yes.	5	A. Well, to me, Project Unicorn	
6	THE REPORTER: (Reading back.)		incorporates really all of the topics on the	
7	"Answer: Yes. Our – the scope		depo notice, the Loan Agreement,	
8	of our representation was at		LLC Agreements. It's all sort of the same	
9	specifically the real		global project.	
10	estate/property level working with	10	Q. But you've already testified, have	
11	especially going through the lender	11	you not, and Wick Phillips has already	
12	required"	12	acknowledged in its papers that it filed in	
13	And then there was an interjection.	13	the bankruptcy court that it represented the	
14	_	14	borrowers in connection with the	
15	RE-EXAMINATION	15	Loan Agreement, correct?	
16	BY MR. BROWN:	16	A. Correct.	
17	Q. Okay. Mr. Wills, I want to	17	MR. BROWN: I don't have any other	
18	understand what your understanding was when	18	questions.	
19	you were asked about the scope of the	19	MR. MARTIN: We'll reserve. Thank	
20	representation of the matter at issue.	20	you.	
21	What matter at issue did you	21	(The deposition was concluded at	
22	understand was being referred to?	22	1:51 p.m.)	
23	A. Wick Phillips' role with	23		
24	Project Unicom.	24		
25	Q. Okay. So you were not answering	25		
l				

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1	Wick Phillips 30/h)/6\ D Wills	Page 126	1 ERRATA SHEET	Page 127
1	Wick Phillips 30(b)(6) - R. Wills			
2	CERTIFICATE		2 Case Name: 3 Deposition Date:	
3			•	
4	I, ANNE E. VOSBURGH, Certified Shorthand		4 Deponent: 5 Pg. No. Now Reads Should Read Reason	
5	Reporter, Registered Professional Reporter,		•	
6	Certified Realtime Reporter, and Closed		6	
7	Captioner, hereby certify:		7	
8	That ROB WILLS, via remote		8	
9	videoconference, solemnly affirmed and agreed to		9	
10	testify to the truth, the whole truth and		10	
11	nothing but the truth; that all counsel		11	
12	stipulated to this process, notwithstanding the		12	
13	location of reporter or witness at time of		13	
14	deposition; and that this transcript is a true		14	
15	and correct record of testimony given.		15	
16	I further certify that I am not related		16	
17	to any of the parties to this action and that I		17	
18	am in no way interested in the outcome of this		18	
19	matter. Dated: August 11th, 2021.		19	
20			20	
21			21 Signature of Deponent	
22	ANNE E. VOSBURGH		22 SUBSCRIBED AND SWORN BEFORE ME	
23	Certified Shorthand Reporter No. 6804		23 THIS DAY OF, 2021.	
24	Registered Professional Reporter		24	
25	Certified Realtime Reporter		25 (Notary Public) MY COMMISSION EXPIRES:	
	'			

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# **EXHIBIT B**

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John A. Morris (NY Bar No. 2405397) (admitted pro hac vice) Gregory V. Demo (NY Bar No. 5371992) (admitted pro hac vice) Hayley R. Winograd (NY Bar No. 5612569) (admitted pro hac vice)

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Counsel for Highland Capital Management, L.P.

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

In re:	§ 8	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,1	§	Case No. 19-34054-sgj11
Debtor.	§ §	

# DEBTOR'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO WICK PHILLIPS GOULD & MARTIN, LLP

PLEASE TAKE NOTICE that pursuant to Federal Rules of Bankruptcy Procedure 7030,

incorporating by reference Federal Rule of Civil Procedure 30(b)(6), Highland Capital

<sup>&</sup>lt;sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Management, L.P., the debtor and debtor-in-possession (the "<u>Debtor</u>") in the above-captioned chapter 11 case ("<u>Bankruptcy Case</u>"), shall take the deposition upon oral examination of Wick Phillips Gould & Martin, LLP ("<u>WPGM</u>") in connection with the *Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and For Related Relief* [Docket No. 2196] (the "<u>Motion to Disqualify</u>") through one or more officers, directors, partners, agents or other representatives, who shall be designated to testify on WPGM's behalf regarding all information known or reasonably available to WPGM with respect to the subject matters identified in **Exhibit A** attached hereto on <u>August 11, 2021</u> commencing at 9:30 a.m. Central Time, or at such other day and time as the Debtor determines upon reasonable notice.

The Debtor requests that WPGM provide written notice at least five (5) business days before the deposition of the name(s) and employment position(s) of the individual(s) designated to testify on WPGM's behalf.

The deposition will be taken remotely via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact Kenneth Brown, Pachulski Stang Ziehl & Jones LLP, at kbrown@pszjlaw.com no fewer than 48 hours before the start of the deposition for more information regarding participating in this deposition remotely.

Exhibit 82 Page 52 of 126

Dated: July 26, 2021 PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717) Ira D. Kharasch (CA Bar No. 109084) Kenneth H. Brown (CA Bar No. 100396) John A. Morris (NY Bar No. 266326) Gregory V. Demo (NY Bar No. 5371992) Hayley R. Winograd (NY Bar No. 5612569) 10100 Santa Monica Blvd., 13th Floor

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-and-

#### **HAYWARD PLLC**

/s/ Zachery Z. Annable

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Counsel for Highland Capital Management, L.P.

#### **EXHIBIT A**

#### **DEFINITIONS**

- 1. "<u>Allocation</u>" shall have the meaning ascribed to it in the Brief.
- 2. "Brief" refers to the Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and For Related Relief [Docket No. 2197].
- 3. "Concerning" means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.
  - 4. "LLC Agreement" shall have the meaning ascribed to it in the Brief.
  - 5. "Loan Agreement" shall have the meaning ascribed to it in the Brief.
- 6. "Restated LLC Agreement" shall have the meaning ascribed to it in the Brief.
  - 7. "Revised Allocation" shall have the meaning ascribed to it in the Brief.

### **TOPICS**

#### Topic No. 1:

WPGM's role Concerning the LLC Agreement.

#### Topic No. 2:

WPGM's role Concerning the Allocation.

## **Topic No. 3:**

WPGM's role Concerning the Loan Agreement.

#### Topic No. 4:

WPGM's role Concerning the Restated LLC Agreement.

## 

# Topic No. 5:

WPGM's role Concerning the Revised Allocation.

## Topic No. 6:

WPGM's representation of parties in connection with the Loan Agreement.

# Topic No. 7:

WPGM's representation of parties in connection with the LLC Agreement.

# Topic No. 7:

WPGM's representation of parties in connection with the Restated LLC Agreement.

# **EXHIBIT C**

#### 

```
1
              IN THE UNITED STATES BANKRUPTCY COURT
               FOR THE NORTHERN DISTRICT OF TEXAS
2
                        DALLAS DIVISION
     In re:
                                )
                                )
3
    HIGHLAND CAPITAL MANAGEMENT,
                                )
                                   Chapter 11
    L.P.
                                )
4
                                )
       Debtor.
5
                                )
                                   Case No.:19-34054-sqj11
       6
7
                    ORAL ZOOM DEPOSITION OF
                        ROBERT L. KEHR
8
                      SEPTEMBER 16, 2021
9
10
                         Volume 1 of 1
       11
              ORAL ZOOM DEPOSITION OF ROBERT L. KEHR,
12
13
    produced as a witness at the instance of the Debtor and
14
     duly sworn, was taken in the above-styled and numbered
     cause on the 16th day of September, 2021, from 10:30
15
16
     a.m. to 2:01 p.m., before ASHLEY ELIZONDO, CSR No. 9465
     in and for the State of Texas, reported by machine
17
     shorthand, in Los Angeles County, California, pursuant
18
     to the Texas Rules of Civil Procedure and the provisions
19
     stated on the record or attached hereto.
20
21
    Job No. 4800824
22
23
24
25
                                                Page 1
```

# Cased 9:334054-sgjj 1:10 of 26:35590F82d 1Fi/led/20/27E22ereEnte/ed/20/27/22:39:137:45e 30efs72 Exhibit 82 Page 57 of 126

1 APPEARANCES:	1 REQUESTED DOCUMENTS/INFORMATION
2 3 FOR NEXPOINT REAL ESTATE PARTNERS:	2 NO. DESCRIPTION PAGE
4 Brant C. Martin, Esq.	3 NONE
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20	22
21	
22 23	23
24	24
25	25
Page 2	Page 4
1 INDEX	1 REPORTERS NOTE: Please note this deposition was taken
2	2 via Zoom; therefore, due to the poor quality of the Zoom
	3 videoconference, audio distortions, internet connections
4 ROBERT L. KEHR	4 freezing, extraneous room noise, et cetera,
5 Examination by Mr. Brant C. Martin 6	5 unintelligent, indiscernible, or inaudibles may have
6 Changes and Signature 142	6 created inaccuracies in the transcription.
7 Reporter's Certificate 144	7 THE REPORTER: Would the witness please raise
8 Further Certificate 146	8 their right hand? Do you solemnly swear to tell the
9	
EXHIBITS	9 truth, the whole truth, and nothing but the truth?
10 NO. DESCRIPTION PAGE	10 THE WITNESS: I do.
11 Exhibit 1 Highland Expert Disclosure 51	11 ROBERT L. KEHR,
	12 having been first duly sworn was examined and testified
	13 as follows:
13 Exhibit 3 HCMLP Expert Production 75	14 EXAMINATION
14 Exhibit 4 Release from Loan Agreement 98	15 THE REPORTER: Will counsel present please
15 Exhibit 5 Bridge Loan Agreement 100	
16 Exhibit 6 Unicorn PSA's 110	16 state their appearances for the record.
17 Exhibit 7 Email Re LLC's to be Formed 122	17 MR. MARTIN: Good morning. This is Brant
18 Exhibit 8 Email Re DST Structures 124	18 Martin from Wick, Phillips, Gould, and Martin, and with
19 Exhibit 10 Mark Patrick Deposition 125	19 me is also one of my partners, Ms. Lauren Drawhorn. We
20 Exhibit 11 Original LLC Agreement 130	20 represent NexPoint Real Estate Partners, LLC.
	MR. BROWN: Good morning. Kenneth Brown from
21 Exhibit 12 First Amended LLC Agreement 133	_
22 Exhibit 14 McGrander Declaration 116	22 the Law Firm of Pachulski, Stang, Ziehl, and Jones
23	23 representing Highland Capital Management, the debtor.
1.24	24 MR. MARTIN: Ms. McLaughlin, do you want to
24	
25	25 make your appearance just for the record?

#### 

- 1 MS. MCLAUGHLIN: Certainly. My name is Shannon
- 2 McLaughlin of Latham and Watkins, LLP, and we represent
- 3 UBS Securities, LLC, and UBS AG London Branch, as
- 4 creditors in the bankruptcy.
- 5 BY MR. MARTIN:
- 6 Q All right. Mr. Kehr, are you ready to proceed?
- 7 A I am.
- 8 Q Excellent. Can you identify yourself for the
- 9 record please?
- 10 A Yes. I am Robert Kehr, and the last name is
- 11 spelled, K-E-H-R.
- 12 Q And, Mr. Kehr, how are you employed?
- 13 A I'm a partner in the law firm called Kehr,
- 14 Schiff, Crane, and Cohen.
- 15 Q How long have you been a partner with that
- 16 particular firm, sir?
- 17 A With slight name changes, this firm has existed
- 18 for 21 years.
- 19 Q And are you a founder of the firm?
- 20 A Yes.
- 21 O And where is the firm located?
- 22 A In Los Angeles.
- 23 Q Mr. Kehr, again, we haven't met prior to today;
- 24 is that correct?
- 25 A Correct.

- 1 A Yes.
- 2 Q So I'll represent for the record I am here at
- 3 my office is Fort Worth, Texas. You, I believe, are in
- 4 your home in California; is that right?
- 5 A I am actually in my office in --
- 6 Q Oh --
- 7 A -- In California.
- 8 Q Excellent. What city are you in in California?
- 9 A Century City which is Los Angeles.
- 10 Q I know it well. And, Mr. Brown, I believe you
- 11 are in your home office in California; is that correct?
- 12 MR. BROWN: Correct. In Oakland.
- 13 Q Mr. Kehr, if at any point in time during this
- 14 new day and age when we're doing many things remotely,
- 15 if at any time you can't understand me or there is a
- 16 technical difficulty, I want you to let me know; is that
- 17 all right?
- 18 A Of course.
- 19 Q And I'm going to assume from your curriculum
- 20 vitae that you have participated in depositions before
- 21 either as an attorney or as a witness; is that right?
- 22 A It is.
- 23 Q So -- and I'm going to also assume that there
- 24 have been many depositions that you have participated
- 25 in; is that accurate as well?

Page 6

Page 8

- Q And other than me asking you how to pronounce
- 2 your name prior to us going on the record, that's the
- 3 only conversations you and I have ever had; is that
- 4 correct?
- 5 A Yes.
- 6 Q And you understand my name is Brant Martin, and
- 7 that I represent NexPoint Real Estate Partners in this
- 8 matter?
- 9 A I understand.
- 10 Q And I believe you've been retained as an expert
- 11 by Mr. Brown and his firm in support of their motion to
- 12 disqualify my firm from representing NexPoint Real
- 13 Estate Partners. Do I have that correct?
- 14 A You do.
- 15 Q And we're here today on that matter, on the
- 16 motion to disqualify, and you are here to provide expert
- 17 opinions, correct?
- 18 A Correct.
- 19 Q And it's your understanding that you're not a
- 20 fact witness, right?
- 21 A That is correct.
- 22 Q I'm going to -- so -- and just for the clarity
- 23 of the record and since this is not being videotaped,
- 24 I'm going to clarify that this record is being taken --
- 25 taken by Zoom by videoconference. You agree with that?

  Page 7

- 1 A Yes.
- 2 Q Can you even estimate for the court how many?
- 3 A I -- I couldn't begin. It would be a blind
- 4 guess. I've been practicing law for 50 years.
- 5 Q What's your primary area of practice?
- 6 A For the last many years, my practice has been
- 7 entirely transactional practice. I started off thinking
- 8 I wanted to be a litigator. Pretty quickly realized
- 9 that that was an unwise choice and transitioned into --
- 10 into transactional work. Transition took, oh,
- 11 perhaps four or five years but was finished by -- was
- 12 finished at least 40 years ago. So of the past 40
- 13 years, I've been a transactional lawyer and part of my
- 14 transactional practice, my non-litigation practice is
- 15 advising lawyers, law firms, and companies that provide
- 16 services to or through lawyers and law firms about
- 17 professional responsibility of lawyers.
- 18 Q Excellent. Since you are a transactional
- 19 lawyer, I am going to run through a couple of ground
- 20 rules that will make this hopefully go faster. I'm
- 21 certainly aware that you're probably familiar with most
- 22 of them, but, again, in this day and age of Zoom and
- 23 pandemics, some of the ways we do things have changed.
- 24 So I'll ask for your patience as I go through some of
- 25 these. Is that okay with you?

#### 

- 1 A Of course. It's your deposition.
- 2 Q Thank you. I appreciate that. First of all,
- 3 let me ask you this. Is anybody else in the room with
- 4 you?
- 5 A No.
- 6 Q Are you in contact with anyone else in any way,
- 7 shape, or form whether electronically or otherwise --
- 8 A No
- 9 Q -- While you're in the deposition?
- 10 A No. I'm not. Well, my email is on the other
- 11 computer screen so I could receive an email I suppose.
- 12 Q I understand. That's fine. That's kind of my
- 13 point, Mr. Kehr. I would advise you that under the
- 14 rules, you're not allowed to contact anyone once you're
- 15 sworn in as a witness, that includes Mr. Brown, so
- 16 that -- and I would take the position that if you do
- 17 communicate with anyone while you're being deposed, that
- 18 I'm entitled to see those communications. Whether you
- 19 agree with that or not, do you understand what my
- 20 position would be?
- 21 A Yes.
- 22 Q Again, if you have any technology issues, if I
- 23 happen to freeze up or Mr. Brown freezes up, I'll
- 24 represent to you that I'm more than willing to be
- 25 patient and to wait to make sure we get those taken care

A No.

- 2 Q Have you ever been a party to a lawsuit in your
- 3 personal capacity outside of your law firm?
- 4 A No.
- 5 Q How many times have you testified either at
- 6 trial or a deposition or an arbitration?
- 7 A I don't keep a running total of that. I can
- 8 only say that I have testified at trial and at
- 9 deposition multiple times.
- 10 Q Do you know what subject matters you've
- 11 testified on since you came here to the cases?
- 12 A Well, I've testified on the professional
- 13 responsibility of lawyers. I testified on fiduciary
- 14 duties both in and outside of the lawyer context. I've
- 15 testified several times on the reasonableness of legal
- 16 fees. I've testified about some corporate law issues.
- 17 That's all I can think of at the moment.
- 18 Q Fair enough. When you've testified in those
- 19 previous matters, has it always been as an expert
- 20 witness?
- 21 A I testified once that I can think of. No.
- 22 Twice that I can think of as percipient witness.
- 23 O Just twice?
- 24 A The only ones I can think of. Yes.
- 25 Q Okay. Can you tell me when you testified as a

Page 12

- 1 of so that we get your full and complete testimony; is
- 2 that fair?
- 3 A Yes.
- 4 Q You're doing a great job of it now, but I would
- 5 ask that you give me verbal answers to my questions
- 6 rather than uh-huh or huh-uh, because those are
- 7 difficult for Ms. Elizondo to take down. Do you
- 8 understand?
- 9 A I do.
- 10 Q Sometimes, as you can probably already tell, I
- 11 tend to talk a little fast. So if I don't -- if I do
- 12 talk fast or you don't understand one of my questions, I
- 13 welcome you to ask me to repeat it or rephrase it,
- 14 because if you answer one of my questions, I'm going to
- 15 assume that you understood it; is that fair?
- 16 A It is.
- 17 Q Excellent. Is there any reason whether mental,
- 18 physical, or medical, that you cannot testify truthfully
- 19 today?
- 20 A No.
- 21 Q Have you ever gone by any other names other
- 22 than Robert Kehr?
- 23 A No.
- 24 Q Do you have any felony convictions or
- 25 convictions of moral turpitude in the last ten years?
  - Page 11

- 1 percipient witness, what the matter that you were
- 2 testifying about was? Rather than being as an expert
- 3 witness.

Page 10

- 4 A Yes. These both involved transactions in which
- 5 I had been involved, and my client in each of these
- 6 situations was pursuing rights related to the
- 7 transaction that I had been involved in.
- 8 Q All right. So as a fact witness, which is what
- 9 we call it down here, you were testifying about what the
- 10 documents said, who was involved, what was going on,
- 11 rather than as an expert witness; is that right?
- 12 A Correct.
- 13 Q And if at any time, Mr. Kehr, you know the
- 14 drill. If I summarize one of your answers, if I'm
- 15 putting words into your mouth, that's not my intention,
- 16 and I invite you to correct me. Can you do that for me?
- 17 A I can.
- 18 Q Excellent. The other times you testified other
- 19 than those two matters, to your knowledge as we sit here
- 20 today, the other times you testified were as an expert
- 21 witness; is that correct?
- 22 A Yes.
- 23 Q And you indicated that you had testified -- I'm
- 24 include -- I'm assuming that includes depositions or
- 25 trials; is that right?

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- 1 A Yes.
- 2 Q How many times have you testified at trial?
- 3 A I don't keep a total. I couldn't tell you.
- 4 Certainly it's been at least a dozen times over the past
- 5 30 years --
- 6 Q All right.
- 7 A -- A bit more than that, but I don't have any
- 8 number that you could rely on.
- 9 Q I appreciate that. When you testified in these
- 10 other matters as an expert witness, was it always either
- 11 about a lawyer's responsibilities and duties or as to
- 12 attorney's fees? Is there any other areas that you've
- 13 testified as an expert witness other than those two?
- 14 A Yes. I've testified about fiduciary duty
- 15 several times outside of the lawyer context.
- 16 Q Fair enough. Anything else?
- 17 A That's all I can think of at the moment.
- 18 Q When you've testified in those others, have you
- 19 testified -- well, I lost my train of thought. I
- 20 apologize. Have all of those -- oh, I know what it
- 21 was -- I was going to ask. Have you ever testified in a
- 22 tribunal other than open court? For example, in front
- 23 of a disciplinary proceeding involving a state bar?
- 24 A Yes. I -- I did -- I think twice. Yes. I
- 25 have.

1

- 1 presentations you've made primarily, if not solely,
- 2 involve the California rules and not the Texas rules; is
- 3 that correct?
- 4 A Well, I would say they primarily involve the
- 5 California rules, but several of them have been
- 6 nationwide in scope where national -- where the rules of
- 7 other jurisdictions which I would say primarily would be
- 8 focused on the ABA model rules as the format that's the
- 9 basis for which all 50 states and the District of
- 10 Columbia on which they've based their -- their rules --
- 11 (Simultaneous speakers)
- 12 Q And none of your articles or presentations
- 13 involve the Texas rules, correct?
- 14 A You know, I can't say yes or no to that. It's
- 15 certainly possible that -- that I've testified -- that
- 16 I've done programs in which the Texas rules have come
- 17 up, because I have done some programs that are not --
- 18 not California programs, but I just wouldn't remember
- 19 that after so many years.
- 20 Q And, primarily, if you were testifying about
- 21 something other than the California rules, I took from
- 22 your previous answer that that testimony or analysis
- 23 would be based primarily on the ABA model rules,
- 24 correct?

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- 25 A I would say most commonly it would be, but I
  - Page 16

- O And was that in California?
- 2 A Both times in California. Yes. Once as a
- 3 percipient witness and once as an expert witness.
- 4 Q How many times of the other episodes in which
- 5 you have testified as an expert witness regarding
- 6 lawyer's duties, how many times has that been in
- 7 California?
- 8 A I don't think I've ever left California to
- 9 testify when I've been in court or in an arbitration.
- 10 It's always been in California.
- 11 Q How many times have you testified regarding
- 12 anything related to the Texas Disciplinary Rules of
- 13 Professional Conduct?
- 14 A I've advised on the Texas rules. I have a
- 15 Texas client who I've advised several times. I don't
- 16 offhand remember ever testifying about the Texas rules.
- 17 MR. MARTIN: Objection. Nonresponsive.
- 18 Q So to the extent that we're sitting here today,
- 19 to the extent that you remember, you've never testified
- 20 at deposition or in open court regarding matters
- 21 involving the Texas Disciplinary Rules of Professional
- 22 Conduct; is that correct?
- 23 A I think that's right.
- 24 Q And I have a copy of your CV which we're going
- 25 to go over here in a second, but the articles and
- Page 15

- 1 can't tell you that I haven't done comparisons in
- 2 testimony to the rules of other jurisdictions. Whether
- 3 that includes Texas or not, I have no way of
- 4 identifying.
- 5 Q I understand. Thank you, Mr. Kehr. And that
- 6 actually leads me to my next question. You would agree
- 7 with me that the ABA model rules, while forming a basis
- 8 for the adoption of somewhat uniform rules across the
- 9 country, that in most, if not all, jurisdictions the ABA
- 10 model rules are modified somewhat from jurisdiction to
- 11 jurisdiction, correct?
- 12 A They have been modified in every jurisdiction.
- 13 Q Thank you.
- 14 A In some jurisdictions, only a little, and other
- 15 jurisdictions, more, but they're all based on the same
- 16 premiss which are the underlying fiduciary duties that
- 17 lawyers have more or less in common with other
- 18 fiduciaries.
- 19 Q All right. I understand that, sir, and I agree
- 20 with you. Have you ever had a grievance filed against
- 21 you?
- 22 A Not that I know of.
- 23 Q Have you ever been disciplined by any of the
- 24 professional or business organizations of which you are
- 25 or have been a member?

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- A No. 1
- Q What's the procedure for grievances in
- 3 California? Do you know whether or not somebody files a
- 4 grievance? Do they dismiss it without telling you?
- 5 What's the -- what's the procedure?
- A Well, it depends on the nature of the
- 7 grievance. There is an online system for anyone in the
- 8 world to file a complaint about a lawyer, and only --
- 9 only if it rises to a level of interest do -- is the
- 10 complaint assigned to an investigator. We have a
- 11 professional investigation group that are employed by
- 12 the -- what's called The Office of Chief Trial Counsel
- 13 and act under the supervision of a lawyer employed full
- 14 time by OCTC.
- Q Have you served as part of the California Bar's
- 16 disciplinary structure related to attorneys?
- A No. It's not a voluntary arrangement. Used to
- 18 be years ago. But for many years, the disciplinary
- 19 system has been entirely professionalized. There are
- 20 full-time lawyers, staff, full-time investigators,
- 21 separate bar courts with judges who wear robes and
- 22 patches like normal judges.
- Q That's interesting because here in Texas there
- 24 are -- there are tribunals. There is actually lawyers
- 25 that serve as voluntary -- voluntary arbiters, if you

- 1 that?
- 2 A I can't offhand. No.
- 3 Q How much of your practice is providing expert
- 4 testimony?
- A Well, that varies enormously from month to
- 6 month and year to year, but I would say it's a -- it's a
- 7 small minority of all of my time.
- Q Can you give a -- even a ballpark percentage of
- 9 the amount of time you spend regarding expert testimony
- 10 in your practice?
- A I'm uncomfortable giving any number because
- 12 people will think I actually calculated it and I never
- 13 have, but I'm comfortable saying that it's a small
- 14 minority. I'm largely a transactional lawyer and part
- 15 of that is advising lawyers, law firms, and others about
- 16 professional responsibility matters.
- 17 Q I -- I do understand that, Mr. Kehr, and you've
- 18 made that very clear. I'll give you a disclaimer. I'm
- 19 not going to hold you to the number, but when you're
- 20 provided as an expert testimony trying to disqualify my
- 21 firm, I'm very interested in what your qualifications
- 22 are to provide that opinion. You understand that,
- 23 right?

Page 18

- 24 A Of course.
- 25 And if somebody was trying to disqualify your

Page 20

- 1 will, of determining whether or not grievances have
- 2 merit. You don't have that same system in California?
- A We have it only in the rare situation in which
- 4 The Office of Chief Trial Counsel declares a conflict
- 5 and then there are some lawyers around the state,
- 6 litigators, with some degree of experience in
- 7 professional responsibility matters who undertake to act
- 8 as the prosecutor, the investigator and prosecutor, in
- 9 those matters. I've never done that. I'm not a
- 10 litigator.
- Q Well, I -- that was actually my next question,
- 12 and I almost interrupted you. I apologize for that.
- 13 You're not a litigator, right?
- 14 A Correct.
- Q So in terms of analyzing a conflict, you've
- 16 never actually had to analyze a conflict for a -- have
- 17 you ever had to analyze a conflict for a matter you were
- 18 taking on personally in terms of litigation?
- 19 A Well, my firm, yes.
- 20 Q Right. But I mean in your practice. Have you
- 21 sat down and analyzed, if I take on this transaction,
- 22 this is a, for instance, same or substantially related
- 23 matter?
- 24 A Of course.
- 25 Q All right. Can you give me some examples of Page 19

- 1 firm, you would take that very seriously, correct?
- 2 A Of course.
- Q And so if someone was proffered as an expert
- 4 witness to disqualify your firm, you would want to know
- 5 what experience they have analyzing the situation under
- 6 which they were offering that opinion, correct?
- A Fair enough.
- Q All right. So if you could even give me an
- 9 estimate of the amount of time that you spend analyzing
- 10 litigation conflicts as an expert witness, I would
- 11 appreciate it.
- 12 A Couldn't possibly do that because you've just
- 13 redefined your question from analyzing conflicts -- I'm
- 14 sorry. From testifying as to expert witness to
- 15 analyzing conflicts in litigation for expert witness
- 16 purposes. I couldn't begin to do that, but I can tell
- 17 you that the analysis of conflicts in the litigation and
- 18 non-litigation contexts, are -- are precisely the same. 19 The underlying fiduciary duties are the same. The
- 20 expectations of the legal system with regard to the
- 21 conduct of lawyers is the same, and the importance of it
- 22 to the legal system and to the system of law and the
- 23 court system is the same whether it's litigation or a
- 24 non-litigation matter.
- 25 Q Well, Mr. Kehr, I'll tell you I agree with that

#### 

- 1 statement as well, but let me ask you a question, and I
- 2 think it's important that you and I define some terms
- 3 right now. You keep coming back to the concept of
- 4 fiduciary duty, and I know what a fiduciary duty is, and
- 5 I think I know what you mean by it. Are you equating a
- 6 conflict under the Texas Rules of Disciplinary Procedure
- 7 as being the same as a breach of fiduciary duty?
- 8 A Well, the -- the Texas rules are disciplinary
- 9 rules, and it -- it is generally the rule that a lawyer
- 10 cannot be professionally disciplined except for
- 11 violating an explicit standard that is contained in the
- 12 disciplinary rules. That's true everywhere that I've
- 13 ever looked. Disciplinary authorities don't have the
- 14 ability to fill in gaps or in effect invent new rules,
- 15 but in a courtroom setting, which would include the
- 16 disqualification setting, the trial court is free to do
- 17 whatever it wants. The rules of professional conduct
- 18 are important evidence of what lawyers are required to
- 19 do and are prohibited from doing, but they don't cover
- 20 the water front.
- 21 Those -- those rules are written in a fairly
- 22 narrow way for purposes of discipline. The idea of
- 23 being that a lawyer shouldn't be disciplined unless
- 24 there is a reasonable explicit rule that gives fair
- 25 notice to the lawyer what the lawyer is required to or Page 22

- 1 be a correct statement that -- that there is going to be
- 2 a fiduciary breach if there is a violation -- a conflict
- 3 violation of one of the conflict rules.
- 4 Q Okay. So I think you answered my question, but
- 5 I want to make it very clear, and let's get this on the
- 6 record. So you think that in this situation, my firm
- 7 breached a fiduciary duty by taking on the
- 8 representation that you think we should be disqualified
- 9 from pursuing, right?
- 10 A Correct. That's correct.
- 11 Q That's not in the summary of your findings.
- 12 MR. BROWN: Well, objection. All the findings
- 13 were -- they weren't findings. They were just a
- 14 disclosure of what he was going to express an opinion on
- 15 at trial, and he's not going to -- you've asked him
- 16 that, but he is not -- that's not something he is
- 17 expressing an opinion on at trial. That's why they're
- 18 not in what you call, "The findings." They're not
- 19 findings. They're just the disclosure of what he is
- 20 going to opine on at the hearing on this matter.
- 21 MR. MARTIN: Mr. Brown, respectfully, I would
- 22 ask you to keep your objection to that which is allowed
- 23 under the federal rules --
- 24 MR. BROWN: No. I was -- I think I'm entitled
- 25 to correct misstatements you make on the record, and --

Page 24

- 1 prohibited from doing. But in a disqualification
- 2 setting, the court can ignore the rule. It can decline
- 3 to disqualify even if there is a -- an apparent
- 4 violation of the rule, or it can disqualify even if
- 5 there is no clear authority that the rule itself has
- 6 been violated.
- 7 These rules are based on the underlying
- 8 fiduciary duties of lawyers, and they exist for the
- 9 functioning of the legal system. That's a long
- 10 discussion I hope we don't need to have, but I think
- 11 it's important that the fiduciary duties are never
- 12 ignored.
- MR. MARTIN: I object as nonresponsive.
- 14 Q Mr. Kehr, I believe my question was, do you
- 15 equate a conflict under the disciplinary rules with a
- 16 breach of fiduciary duty?
- 17 A I think that if there is ever a conflict under
- 18 the disciplinary rules, there is a breach of fiduciary
- 19 duty.
- 20 Q Per say?
- 21 A I think that's probably true. It would take a
- 22 long time to think about all of the possible
- 23 hypothetical's, but because the rules are based on
- 24 fiduciary duties, loyalty, confidentiality, full
- 25 disclosure, then I think it's -- it's probably going to Page 23

- 1 (Simultaneous speakers)
- 2 MR. BROWN: I'm going to continue to do that,
- 3 Mr. Martin. So every time you make a misstatement, I am
- 4 going to correct it on the record, and you made a
- 5 misstatement.
- 6 MR. MARTIN: I don't believe I made a
- 7 misstatement, but to the extent that you're objecting to
- 8 my use of the word findings, I'll withdraw it and I I'll
- 9 rephrase it.
- 10 Q Mr. Kehr, in the summary that was provided to
- 11 me of what you were going to testify about, I don't
- 12 believe it appeared that you were going to testify that
- 13 there was an actual breach of fiduciary duty by my firm.
- 14 Now, the reason this is important, and you and I may
- 15 disagree on this, but I draw a distinction between a
- 16 conflict under the disciplinary rules and a breach of
- 17 the fiduciary duty, and your answer to my previous
- 18 question takes this to an entirely new level for me. So
- 19 I need to make this very clear what I'm asking you.
- 20 Do you believe that the conflict that you're
- 21 testifying about today equates to a breach of fiduciary
- 22 duty by my firm?
- 23 MR. BROWN: Objection. Goes beyond the
- 24 designation that we've submitted. He is not going to
- 25 opine on that, and we have made it clear he is not.

#### 

- 1 A The answer to the question is, yes.
- 2 Q Thank you.
- 3 MR. MARTIN: Mr. Brown, are you willing to
- 4 stipulate that he's not going stipulate in this matter
- 5 that there was a breach of fiduciary duty by my firm?
- 6 MR. BROWN: We're willing to live by the
- 7 designation. That's what I'll -- what his opinions are
- 8 as set forth in the designation.
- 9 MR. MARTIN: You can't have it both ways.
- 10 MR. BROWN: I'm not willing to stipulate to
- 11 anything with you right now, Mr. Martin.
- MR. MARTIN: Okay. Well, I need to put this on
- 13 the record. So -- and Mr. Kehr, nobody is picking on
- 14 you just because Mr. Brown and I have having a fight.
- 15 My point in making this record is this: When I was
- 16 preparing for this deposition to depose this witness, I
- 17 was operating off of the description that was given to
- 18 me by opposing counsel which was that this witness was
- 19 going to opine that there was a conflict. Within the
- 20 first 20 minutes of this deposition, it appears that
- 21 this witness equates a violation of the disciplinary
- 22 rules with a breach of fiduciary duty.
- 23 A You've -- you've overstated what I said before.
- 24 Q Please clarify.
- 25 A I talked only about the conflict rules.

- So, therefore, I want to take it up with the
- 2 court which is why I'm making this record. Mr. Brown
- 3 and I are not going to agree on this today, but I want
- 4 to take it up with the court that to the extent that
- 5 there is going to be any evidence offered that my firm
- 6 might have breached a fiduciary duty, which I believe is
- 7 separate from the conflict rules, then I'm going to
- 8 object to that, because to me, that's a far more serious
- 9 allegation. That's all I was trying to put on to the
- 10 record.
- MR. BROWN: Yeah. And -- and Brant -- Brant,
- 12 let me just -- I think that we may be able to clarify
- 13 this. I need to talk to Mr. Kehr off the record,
- 14 because I don't believe we've designated him as an
- 15 expert on breach of fiduciary duty. I don't believe
- 16 that we're going to offer any testimony by him with
- 17 respect to the firms breach of fiduciary duty other
- 18 than -- well, what he is going to testify to is that, in
- 19 a sense, that there was a violation of rule 109 of the
- 20 Texas Disciplinary Rules. I don't think there is any
- 21 need for him to get into the breach of fiduciary duty.
- 22 The reason he answered that question is you specifically
- 23 asked him. If you had asked him, "What are you going to
- 24 express an opinion on at the hearing?" That wouldn't
- 25 have been included.

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- Q Okay. But I asked you --
- 2 A There is lots of other rules, and -- and I'm
- 3 not able as I sit here to think about the -- I'm not
- 4 certain how many there are in Texas, roughly 65 rules of
- 5 professional conduct, and it would take me a good deal
- 6 of time to think through your question with regard to
- 7 each of the rules.
- 8 Q Sure.

1

- 9 A But with regard to conflict rules, they are
- 10 based on underlying fiduciary principles which are
- 11 confidentiality and loyalty principles, they're both
- 12 fiduciary duties, and if a lawyer were to violate
- 13 confidentiality or loyalty standards, creating -- as a
- 14 result of a conflict of interest, I believe that there
- 15 is both a disciplinary violation under the rules --
- 16 disciplinary rules of -- in Texas and of the fiduciary
- 17 duty on which those rules are based.
- MR. MARTIN: I -- I understand that, Mr. Kehr,
- 19 and I -- that's not the distinction I'm trying to make.
- 20 So I'll try to be even clearer about that. My point
- 21 was, is that you've been disclosed as an expert witness
- 22 regarding conflict rules, right? And then now you're
- 23 saying that there was a breach of fiduciary duty. To 24 me, that takes it to another level in terms of the
- 25 accusations against my firm.

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- So if you want a stipulation, I'm happy to consider it, but I need to talk to Mr. Kehr off the
- 3 record. So perhaps we can save this for a break and
- 4 come back to it, because I think we're -- I think
- 5 we're -- we're mashing gears here without the need to do
- 6 so, because I don't think that this is something that's
- 7 going to come up at the hearing.
- 8 MR. MARTIN: Okay. Well, I think we've made
- 9 our record regardless. I appreciate that attempt at
- 10 clarification, Ken. I think that, you know, we've made
- 11 our record, and we can move on so I appreciate the --
- 12 the dialogue.
- MR. BROWN: And I agree. It's not in -- it's
- 14 not in the designation. It's simply not.
- 15 Q I understand. I understand. Mr. Kehr, thank
- 16 you for your patience.
- 17 A No problem.
- 18 Q Are you -- are you aware of -- in all your
- 19 other expert testimony regardless of the subject, are
- 20 you aware of any time that your opinion has been struck
- 21 by a court?
- 22 A I can think of one time when I was not allowed
- 23 to testify.
- 24 Q Tell me about that.
- 25 A There was a criminal prosecution of a lawyer

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- 1 for -- I'm trying to think of what the term is in the
- 2 criminal law. Let's just call it blackmail.
- Q 3 Oh.
- A That's probably not the statutory term. And
- 5 the defense lawyer wanted to offer testimony about
- 6 certain aspects of lawyer conduct, and the court ruled
- 7 that no expert testimony would be permitted. That's the
- 8 only instance I can think of.
- Q Thank you. I'm going to ask a little bit of a
- 10 separate question now so listen for the distinction, and
- 11 if you don't get it, I want you to ask me to clarify,
- 12 but there is a difference between being struck as an
- 13 expert and having an expert opinion of your's limited in
- 14 some way. Are you aware of any instance in which your
- 15 expert opinion has been limited in any way by a court or
- 16 a tribunal?
- 17 A Oh, my. Well, it seems to me that it's -- it's
- 18 certainly possible that there have been limitations.
- 19 Quite possibly limitations I'm not even aware of as a
- 20 result of in limine motions and discussions among trial
- 21 counsel and the court. I can't think of an instance. I
- 22 can only say that I can't think of any as I sit here.
- Q Thank you. And you've never taught any classes
- 24 on the Texas Disciplinary Rules of Professional Conduct,
- 25 correct?

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- 1 retention letter?
- A I received a call from one of Ken's partners.
- 3 I'm going to -- I'm going to estimate two weeks before I
- 4 was retained.
- 5 O Okay.
- A And he -- he asked me questions that turned out
- 7 to be about this situation. Although, in those -- I
- 8 think we had two or three conversations. Give me a
- 9 moment to think about this because I'm trying to draw a
- 10 picture in my mind. I was somewhere out of doors on an
- 11 iPhone. I can't remember exactly what the context was.
- 12 I'm sorry.
- Q It's okay. That's usually how I ask people to
- 14 remember. That's why I always say was it football
- 15 season or was it basketball season because sometimes
- 16 that triggers people's memories on exactly the situation
- 17 that you're talking about. So please -- please take
- 18 your time.
- 19 A My best estimate is I had perhaps three
- 20 phonecalls with one of Ken's partners asking me
- 21 questions about what turned out to be this situation
- 22 although he didn't tell me who was involved. And then
- 23 subsequently I got a call from -- I think one of the
- 24 other firm partners involved in the Highland Capital
- 25 Management situation, and I drew the connection between

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- 1 A That's correct.
- 2 When were you retained in this case?
- A You know, I'd have to look at my computer to 3
- 4 try to figure out when I was first contacted. I'm just
- 5 not sure of that.
- Q Could you estimate it? Like, what season was
- 7 it? Was it cold? Was it football season? I mean.
- 8 it's -- it's kind of important to know.
- A You know, we don't have seasons in Los Angeles.
- 10 Q Fair enough.
- 11 A It [inaudible] stays the same.
- 12 (Simultaneous speakers)
- 13 MR. BROWN: You have his retention letter. I
- 14 know we produced it to you.
- Q Oh, you know what? That's a great idea,
- 16 because we do have that. I wasn't there yet, but let me
- 17 go ahead and go there. So, Mr. Kehr, I've got your
- 18 retention letter here as June 18th, 2021. As we sit
- 19 here today, it's September 16th, 2021. So that's --
- 20 let's see. July, August, September. That was three
- 21 months ago. Does that sound about right?
- A Fair enough. I can live with that.
- Q All right. In your memory as we sit here
- 24 today, can you remember how much time elapsed between
- 25 when you were first contacted about this and your
- Page 31

- 1 those roughly three calls I had with another partner.
- 2 So I'm going to say for -- as an estimate, two weeks
- 3 before I was retained.
- Q All right. So two weeks prior to your
- 5 retention -- your retention was on June 18th, 2021, and,
- 6 again, I'm not going to hold you to the exact date. Can
- 7 we agree that some time in early June 2021 is when you
- 8 think you were first contacted about this case?
- 9 A I think that's a -- that's a fair estimate.
- 10 Q Thank you. And what was the name of the
- 11 partner that first contacted you that you had the two or
- 12 three conversations with?
- 13 Stan Goldich, G-O-L-D-I-C-H.
- 14 0 And is Mr. Goldich a professional colleague or
- 15 a friend?
- A He and I served on a LA County Bar Committee
- 17 together a number of years ago, and that's how we first
- 18 met.
- 19 Q Are you friends? I mean, how -- how often do
- 20 you speak to Mr. Goldich?
- 21 Rarely.
- 22 Q Okay. And what was the name of the second
- 23 colleague of Mr. Brown's that you spoke to when you put
- 24 it together that it was the same case that Mr. Goldich
- 25 had called you about?

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- 1 A That I don't know. There have been -- it seems
- 2 like about a half a dozen firm lawyers who I've had
- 3 contact with at one time or another, and I just don't
- 4 remember the order of them, and these are all people who
- 5 I've never physically seen so I have no mental picture
- 6 to call on.
- 7 Q Fair enough. Do you know whether or not it was
- 8 a man or a woman?
- 9 A Man.
- 10 Q And you said partner. Do you know it was a
- 11 partner, or could it have been an associate?
- 12 A I can't be certain.
- 13 Q Fair enough. Tell me about that conversation
- 14 when you put it together that this was the same case
- 15 Mr. Goldich had called you about.
- MR. BROWN: I'm going to caution you, Mr. Kehr.
- 17 Unless you considered the -- whatever information you
- 18 got in these calls and in forming the opinions that
- 19 you've been designated to testify on in this case, the
- 20 conversations that you had about this case with lawyers
- 21 from the Pachulski firm are work product and or are
- 22 privileged, and so I want you to be careful to not
- 23 disclose information that you did not consider in
- 24 forming your opinions.
- 25 A Okay. I'm fine with that. But my answer was

- 1 clarification in here. So you're taking the position
- 2 that any conversations that your firm had with an expert
- 3 are not discoverable based on work product or privilege
- 4 if they didn't form the basis of his opinion.
- 5 MR. BROWN: He didn't consider it in forming
- 6 the opinions he's going to give in this case. If my
- 7 firm consulted with Mr. Kehr on legal issues unrelated
- 8 to this matter, yes, those are privilege.
- 9 MR. MARTIN: All right. Well, fair enough.
- 10 I'm not conceding that but I understand your position
- 11 and that's why I wanted the clarification. Let me take
- 12 it one step further and ask you this. If he has a
- 13 conversation with somebody from your firm about this
- 14 disqualification motion, are you instructing him not to
- 15 answer or to limit his testimony in any way if it
- 16 involved this disqualification motion?
- MR. BROWN: I'm -- he needs -- it's under Rule
- 18 26, it's not work product protected if he considered it
- 19 in forming his opinions. So to the extent he considered
- 20 it, he can disclose it. To the extent he had
- 21 conversations and communications with my firm that he
- 22 didn't consider in forming his opinions, it's work
- 23 product.

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- 24 Q Thank you. Mr. Kehr, I think the question that
- 25 I originally asked you -- let me rephrase it --

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- 1 going to be even less helpful than that. There is no
- 2 way I can distinguish individual conversations. During
- 3 the past three months, I've probably had, you know, 20
- 4 or 30 conversations with different people at the firm
- 5 with regard to the underlying circumstances, facts,
- 6 their discovery of new facts, scheduling questions, and
- 7 so on and so forth, and it's a complete jumble. I can't
- 8 distinguish conversations.
- 9 Q Have you had any conversations with anybody at
- 10 Mr. Brown's firms about any matter related to Highland
- 11 Capital other than this disqualification motion?
- 12 A I'm just trying to distinguish -- give me a
- 13 moment. I think the answer is yes.
- 14 Q Okay. Can you tell me what other matters
- 15 you've had conversations about other than this
- 16 disqualification motion?
- 17 MR. BROWN: Again, I'm going to caution you,
- 18 Mr. Kehr. The conversations -- this is even more
- 19 limited because to the extent you've had conversations
- 20 with Counsel at Pachulski on other matters, obviously
- 21 you had to consider them in forming your opinion. So
- 22 those would either be work product or privileged. And
- 23 so to the extent those communications relate to work
- 24 product or privilege, I'm instructing you not to answer.
   MR. MARTIN: Mr. Brown, I just want to get a
- 5 MR. MARTIN: Mr. Brown, I just want to get a Page 35

- 1 A Sure.
- 2 Q -- To perhaps assuage Mr. Browns concerns. If
- 3 you had any conversation -- without revealing the
- 4 contents of any conversations, have you had
- 5 conversations with anybody about -- from his firm about
- 6 any matter other than this disqualification motion?
- 7 Just give me the subject matter if you have.
- 8 A Well, I don't -- I don't think I can do that.
- 9 I have known Stan Goldich for -- and I'm just going to
- 10 roughly estimate 20 years, and he has called me from
- 11 time to time with questions about the -- I think
- 12 probably always about the professional responsibilities
- 13 of lawyers. Most of time I probably made no notes of
- 14 those things, and these are things that have been gone
- 15 from my memory for ages. I have no practical way of
- 16 answering your question except I have been in touch from
- 17 time to time on a variety of matters --
- 18 Q Are -- sorry. I didn't want to interrupt you.
- 19 I apologize. Go ahead.
- 20 A No. That's okay. Please go ahead.
- 21 Q Okay. We established that you were first
- 22 contacted about this disqualification some time in early
- 23 June 2021, correct?
- 24 A Yes. I think that's a fair estimate.
- 25 Q All right. So that was three months ago,

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- 1 right?
- 2 A Right.
- 3 Q Have you had any discussion with anybody at
- 4 Mr. Brown's firm in the last three months about anything
- 5 related to Highland that was not about this
- 6 disqualification motion?
- 7 A Yeah. I think you asked me that before, and I
- 8 think the answer is, yes. I think there have been
- 9 conversations about the Highland situation that didn't
- 10 directly relate to the disqualification motion.
- 11 Q Can you identify those matters by subject
- 12 matter without revealing the contents of the
- 13 conversation?
- 14 A I really can't. I have -- I have no clear
- 15 recollection of what discussions there might have been,
- 16 but I'm pretty sure that's -- that's happened. Give me
- 17 one moment to turn off my phone which just tried to tell
- 18 me there was a call coming in. Okay. Go ahead.
- 19 Q Sure. All right. Do you know whether or not
- 20 you've been designated as an expert by Mr. Brown's firm
- 21 in any other matters?
- 22 A Not that I know of. I don't think so.
- 23 Q Do you know whether or not -- or let me ask it
- 24 a different way. Have you prepared or reviewed
- 25 materials related to any matter from Mr. Brown's firm

- 1 Q Other than Highland and other than this
- 2 disqualification, how many other times have you been
- 3 retained by Mr. Brown's firm as an expert witness?
- 4 A To the best of my memory, I never have been.
- 5 Q When you were analyzing this matter and this
- 6 disqualification matter, did you analyze whether or not
- 7 it would have been more appropriate to have an expert on
- 8 the Texas rules be the expert in this case? Did you
- o the rexas rules be the expert in this case. Did ye
- 9 consider that?
- 10 A Well, I think I am an expert on the Texas
- 11 rules. My -- my involvement with the rules to
- 12 professional conduct is nationwide. I advise two
- 13 international law firms, other multi-branch law firms,
- 14 and one continuing Texas client. I -- I dealt -- I
- 15 regularly deal with the rules of professional conduct
- 16 all across the country. That's probably a slight
- 17 exaggeration. I don't offhand remember ever having
- 18 advised any -- anybody on the North Dakota rules, but I
- 19 have advised on the rules in Texas, Washington, DC,
- 20 Virginia, South Carolina, Massachusetts, New York,
- 21 Nevada.

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- 22 Q I -- I understand that, Mr. Kehr, but your
- 23 previous answer was that you do consider yourself an
- 24 expert on the Texas rules, correct?
- 25 A Correct.

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- 1 involving Highland other than this disqualification
- 2 motion?
- 3 MR. BROWN: I'm sorry. You broke up, Brant.
- 4 Could you just repeat it? I didn't get -- I didn't hear
- 5 the question.
- 6 Q Sure. Mr. Kehr, have you reviewed any
- 7 materials or provided even a preliminary opinion on any
- 8 other matters involving Highland other than this
- 9 disqualification motion?
- 10 A Prepared materials, I think the answer is, no.
- 11 Reviewed materials, possibly. That would require a
- 12 computer search to see whether I -- whether my
- 13 interactions with the firm have all been verbal or
- 14 whether I actually received something in writing. I'm
- 15 just not sure of the answer to that.
- 16 Q Can you identify by subject matter what the
- 17 other matters might have been that you have worked with
- 18 Mr. Brown's firm on in involving Highland other than
- 19 this disqualification?
- 20 MR. BROWN: I think asked -- objection. Asked
- 21 and answered.
- 22 O You can answer it, Mr. Kehr.
- 23 A The answer is, no. I can't.
- 24 Q You can't identify the subject matter, right?
- 25 A No.

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- 1 Q Okay. How many times have you consulted on the
- 2 Texas rules such that you believe it qualifies you as an
- 3 expert on the Texas rules?
- 4 A Well, I don't think my expertise is based on
- 5 how many times I've consulted on the Texas rules. The
- 6 answer to that is, oh, maybe ten times as a very rough
- 7 estimate, but I have studied the rules around the
- 8 country when I was part of the commission that wrote the
- 9 California Rules of Professional Conduct and that
- 10 exercise, which went on for years, involved our
- 11 comparing the rules in all other 49 states and
- 12 Washington, DC, to look for ideas to see what the logic 13 was and so on. We did a -- a 50 jurisdiction comparison
- 14 and the Texas rules were certainly part of that. So
- 15 I -- I have studied these rules. I did it over a period
- 16 of years as well as consulting specifically on the Texas
- 17 rules on multiple occasions.
- 18 Q Mr. Kehr, have you ever testified in a case as
- 19 an expert regarding the Texas rules specifically?
- 20 A [inaudible]
- 21 (Simultaneous speakers)
- MR. BROWN: Objection. Asked and answered.
- 23 A Yeah.
- 24 Q You have or you have not?
  - A No. I don't believe I have.

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- 1 Q Okay. Mr. Kehr, prior to this case, have you
- 2 ever worked with Mr. Brown before?
- 3 A I don't think so.
- 4 Q Have you ever worked with John Morris before?
- 5 A I don't believe so.
- 6 Q Have you ever worked with Jeffery Pomerantz
- 7 before?
- 8 A I don't think so.
- 9 Q How are you being compensated in this case?
- 10 A Isn't -- isn't that in the court filing?
- 11 Q It might be. I'm asking if you know.
- 12 A I -- I send bills to Mr. Brown's firm which
- 13 then passes them on to Highland, and I'm paid by
- 14 Highland.
- 15 Q And do you know what your rate is?
- 16 A Not offhand. I don't remember.
- 17 Q Do you know whether or not the bills have been
- 18 paid when they were submitted?
- 19 A That's a good question. I don't offhand know
- 20 that. No.
- 21 Q I own a firm too, Mr. Kehr, and I can -- you
- 22 know, that's one of the things I always look at is that
- 23 the client's are paying or not. You don't know whether
- 24 or not this client has been paid?
- 25 A I'd have to check.

Q Is anyone else assisting you on this matter?

- 2 A It's conceivable that my partner Rachelle Cohen
- 3 has spent a little bit of time on this. We often work
- 4 together, but I can't be certain without checking the
- 5 billing records.
- 6 Q Do you know what parts of this case Ms. Cohen
- 7 may have worked on versus what parts you worked on
- 8 personally?
- 9 A Either all or virtually all of the work has
- 10 been my personal work. If I've asked her to -- to
- 11 double check something for me, I -- I wouldn't be able
- 12 to identify that without looking at time records.
- 13 Q And in connection with your work on this case,
- 14 when is the last time you read the Texas Rules of
- 15 Disciplinary Procedure?
- 16 A You mean procedure?
- 17 Q When is the last time you read the Texas rules
- 18 in connection with this case?
- 19 A Okay. You asked the rules of procedure and
- 20 that's the reason I paused.
- 21 Q Okay.
- 22 A Yeah.

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- MR. BROWN: Objection. The question is vague
- 24 and ambiguous as to what rules you're referring to.
- 25 Q I apologize. Let me get the name right. Your

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- Q Do you know whether or not you charge a
- 2 different rate for analyzing the case versus providing
- 3 testimony?
- 4 A I charge a single rate.
- 5 Q But you don't know what that rate is, right?
- 6 A I'd have to check to be certain.
- 7 Q How many hours have you worked on this case?
- 8 A Oh, I have no idea. That's by -- the computer
- 9 keeps track. I couldn't keep track without a --
- 10 Q Well, that actually goes to my next question.
- 11 How frequently do you record your time on this case?
- 12 A We have a billing system that allows us to
- 13 record time as we are performing services. It's -- it's
- 14 a written --
- 15 (Simultaneous speakers)
- 16 Q That's [inaudible] but it doesn't always
- 17 happen. My question is how often do you record your
- 18 time on this case?
- 19 A Whenever I'm spending time on the case.
- 20 Q Okay. So that's on a daily basis? If you're
- 21 working on this case, you automatically -- you
- 22 immediately record the time?
- 23 A It's a minute by minute basis. It's a clock in
- 24 the system. You punch the clock when you start working
- 25 on a new matter, and it keeps track of the time.
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- 1 opinion in based on at least Rule 109 of the Texas
- 2 Disciplinary Rules of Professional Conduct, correct?
- 3 A Correct.
- 4 Q When is the last time you read them in
- 5 connection with this case?
- 6 A Yesterday.
- Q Okay. And which rules did you read?
- 8 A I think on that instance, I only looked at
- 9 1.09.
- 10 Q How many other of the rules did you consider in
- 11 analyzing this case?
- 12 A I'm pretty sure I looked at 1.05. Probably --
- 13 no. No. I'm not sure. 1.05, yes. It's the only one I
- 14 can think of offhand.
- 15 Q So 1.05 and 1.09 and at -- I'm going to be
- 16 generous. I'm going to -- assuming -- your testimony
- 17 would be there might have been others, but you can't
- 18 remember them right now; is that right?
- 9 A Yes. In order to be certain, I'd probably need
- 20 to put the rules in front of me and think through what
- 21 my analytical process was.
- Q Prior to working on this case, when was the
- 23 last time you had read the Texas rules?
- A I would estimate that the last time I got a
- 25 call specific to Texas was about a month before that.

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- 1 Q Was that from Mr. Brown's firm, or was it
- 2 related to another matter?
- 3 A Another matter.
- 4 Q And you didn't testify or get designated as an
- 5 expert witness in that other matter, correct?
- 6 A No. It was advising a law firm about a Texas
- 7 situation. It was not an expert witness engagement.
- 8 Q I'm still a little troubled by somebody
- 9 retaining a California expert in a case involving the
- 10 Texas rules. So I'm going to ask you, part of your
- 11 basis for claiming to be an expert in the Texas rules is
- 12 your work for a Texas law firm; is that correct?
- 13 A That's part of it. Yeah.
- 14 Q All right. What's the name of that firm?
- 15 A I think the names of my clients are
- 16 confidential.
- 17 Q Okay. And I thought that might be your answer.
- 18 Are you -- you would rather not or you're refusing -- in
- 19 a nice way, you're refusing to answer that question
- 20 based on confidentiality; is that correct?
- 21 A Correct.
- 22 Q Is your compensation dependent on the outcome
- 23 of this case?
- 24 A No.
- 25 Q Have you ever been retained to testify for

1 A That's always the first step. And the second

- 2 step typically is a, kind of, high level 35,000-foot
- 3 overview of what the circumstances are.
- 4 Q And you take that into account in analyzing the
- 5 case, correct?
- 6 A It's -- it's -- to some degree, yes. But --
- 7 but the initial discussion of that kind, my
- 8 understanding generally is indefinite and often
- 9 incorrect because the lawyer who tries to give me the
- 10 overview of something that the lawyer has already spent
- 11 hundreds of hours on. It is not digestible. It's got
- 12 to be slowed down. It's only when I start receiving
- 13 copies of materials that I can appreciate the -- the
- 14 full context and the details of a potential expert
- 15 witness engagement.
- 16 Q So is it your testimony that you did not take
- 17 into account anything in those first two or three
- 18 conversations in analyzing this case?
- 19 A No. I can't say that. I can only say that I
- 20 can't distinguish that conversation from the dozens of
- 21 others I've had or from the other sources of
- 22 information. The copies of the contracts that are
- 23 involved in this situation. It becomes a -- a -- a
- 24 combined source of information.
- 25 Q So because that is a combined source of

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- 1 James Seery before now?
- 2 A No.
- 3 Q Do you know who James Seery is?
- 4 A I think he's the CEO now, isn't he? Of
- 5 Highland.
- 6 Q When you were first contacted about this case
- 7 and you started considering this case and analyzing it,
- 8 what were you told about the disqualification motion?
- 9 A [inaudible]
- 10 (Simultaneous speakers)
- 11 MR. BROWN: Well, again, I'm going to object to
- 12 the extent you considered matters that were told to you
- 13 by lawyers of Pachulski in forming your opinions. You
- 14 can testify to the extent they were considered. Beyond
- 15 that, it's work product, it's privilege, and I'm
- 16 instructing you not to answer.
- 17 Q Let me try to fix his objection, Mr. Kehr,
- 18 before you answer. When you're contacted about a case,
- 19 do you ask what the facts of the case are?
- 20 A Well, I think that somewhere early in my
- 21 discussions with -- with a law firm about a potential
- 22 expert witness engagement, I'm going to be given
- 23 initially the names of the players so we can check for
- 24 possible conflicts.
- 25 Q Sure.

- 1 information, you -- according to your lawyer's
- 2 instructions, don't want to testify as to what those 3 first conversations were. Do I have that correct?
- 4 A No. I'm telling you that I can't distinguish
- 5 those first conversations from other sources of
- 6 information and --
- 7 Q What do you remember -- sorry. Go ahead.
- 8 A That's okay. You go ahead.
- 9 Q What do you remember from those first
- 10 conversations that you were told that you did take into
- 11 account in analyzing this case?
- 12 A I -- I -- again, I can't distinguish first
- 13 conversations from other sources of information. There
- 14 are particular topics such as, you know, how the Bridge
- 15 Loan worked. I might have heard about multiple times.
- 16 There is no way I can distinguish what I might have
- 17 heard in a first or second conversation from the other
- 18 sources of information.
- 19 THE REPORTER: Did you say, "How the Bridge
- 20 Loan worked"?
- 21 A It's bridge, B-R-I-D-G-E. The Bridge Loan.
- 2 Q Mr. Kehr, I need to state this simply because
- 23 we might have to take up with the court. Are you
- 24 willing to tell me about those initial two or three
- 25 conversations when you were first contacted about this
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- 1 case, or do you feel that you can't do it because of
- 2 your lawyer's instruction?
- 3 A I -- I'm delighted to tell you about them if I
- 4 could. What I'm telling is I can't distinguish them
- 5 from other sources of information.
- 6 Q Right.
- 7 A I have an understanding today of what the
- 8 transactions involved and who the players were. I
- 9 obtained that information over a period of time from
- 10 multiple sources. I can't tell you which particular
- 11 source led to any particular element of my
- 12 understanding.
- 13 Q I understand. All right. Let's go to -- and,
- 14 Mr. Kehr, this is the part where we might experience
- 15 some technical difficulties because I'm technologically
- 16 sometimes not very adept. I'll just put it that way.
- 17 That's a nice way to say it. And we've been going about
- 18 an hour so I think now might be a good time for a
- 19 personal convenience break for about five minutes if
- 20 that's okay with everybody and then we'll come back and
- 21 we'll talk about some of the documents. Fair enough?
- 22 A Whatever you want.
- 23 Q Great. Come back in five.
- 24 (Recess from 11:31 a.m. to 11:41 a.m.)
- 25 Q Mr. Kehr, are you ready to proceed?

- 1 Mr. Kehr, do you see a document appearing on your
- 2 screen?
- 3 A I do.
- 4 Q Excellent. And if you'll see this documents
- 5 title -- and you're familiar with the style of cases in
- 6 litigation and where the title is on a document that's
- 7 filed in litigation, correct?
- 8 A Yes.
- 9 Q All right. This document's titled -- read
- 10 along with me. Is Highland Capital Management LP's
- 11 disclosure of intent to use as an expert witness at the
- 12 hearing on it's motion to disqualify Wick, Phillips,
- 13 Gould, and Martin, LLP. Did I read that correctly?
- 14 A Yes.
- 15 Q And I assume that you've seen this documents
- 16 before?
- 17 A Yes.
- 18 Q And when did -- when did you see this document?
- 19 A I think at about the time it was filed.
- 20 Q All right. And I'm going to direct your
- 21 attention on this document to page three. As we move
- 22 down, you'll see the heading there says, Summary of
- 23 Opinions. Did I read that correctly?
- 24 A Yes.
- 25 Q All right. And you understand that this is the

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- 1 A I am.
- 2 Q And you understand you're still under oath?
- 3 A Correct
- 4 Q All right. I'm going to ask you about some
- 5 documents now. So let me explain to you to speed us up
- 6 how this is going to work. Ms. Drawhorn is attending
- 7 this deposition with me in a different Zoom room, if you
- 8 will. She is going to put the exhibit up there, and I'm 9 going to ask you questions about each exhibit. To the
- 10 extent that I might be a little slow on the highlighting
- 11 or the emphasis on certain documents, I want you to ask
- 12 me to restate something. Because if you don't get it,
- 13 then, you know, that's trouble for both of us. Fair
- 14 enough?
- 15 A Yes.
- 16 Q All right. And before we go there, you're not
- 17 licensed in the State of Texas, correct?
- 18 A No.
- 19 Q And how many other jurisdictions other than
- 20 California are you licensed in?
- 21 A None.
- 22 (Exhibit No. 1 was marked for identification.)
- 23 Q Okay. All right. I want to go to Exhibit 1,
- 24 and I believe these were provided to you ahead of time.
- 25 If you need time to catch up, I want you to let me know.

- 1 summary of opinions we were provided that Mr. Brown used 2 to disclose what you were going to testify about,
- 3 correct?

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- 4 A Yes.
- 5 Q How much input, if any, did you have into the
- 6 drafting or the editing of this summary?
- 7 A Well, I don't think I was involved in -- in
- 8 drafting or editing. I was involved in explaining to
- 9 Mr. Brown what my opinions are, how I analyze the
- 10 situation, and that became his summary of my opinion.
- 11 Q All right. So I'm taking it from that answer
- 12 that as far as you are concerned, Mr. Brown drafted this
- 13 summary of opinions, correct?
- 14 A Yes. I probably commented on it at some point,
- 15 but I think it's based on communications that he and I
- 16 had had before he did his summary.
- 17 Q Do you remember at any point editing this
- 18 document or a version of this summary prior to it being
- 19 filed?
- 20 A I don't.
- 21 Q Do you remember whether or not you provided any
- 22 red line comments or anything else to Mr. Brown
- 23 correcting a description of the summary?
- 24 A I don't.
- 25 Q You don't remember or you didn't do it?

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- 1 A I don't remember whether I did.
- 2 Q All right. So let's go to -- well, let me ask
- 3 this question first. Since this document has been
- 4 filed, had you reviewed this summary of your opinions?
- 5 A I'm -- I'm not certain. I might have seen it
- 6 before it was filed. I might have seen it afterwards.
- 7 I'm just not certain.
- 8 Q Do you know whether or not this section of this
- 9 document accurately reflects what you think about this
- 10 case?
- 11 A I think it does in the summary fashion. Yes.
- 12 Q All right. I want to go to subsection B, and
- 13 I'm going to read the first bullet point under
- 14 subsection B, and I want you to follow along.
- 15 A If you could give me one -- if you could give
- 16 me one moment. I have a copy of it on my computer.
- 17 Q That would be great.
- 18 A And I'm to going open it up because on the
- 19 screen it's partly blocked by the -- by the images of
- 20 the participants. Okay. Go ahead. I'm ready.
- 21 Q All right. The first bullet point states, "A
- 22 lawyer owes two duties to a former client. These are
- 23 continuing duties of loyalty and of confidentiality.
- 24 Those are separate and independent duties. A lawyer can
- 25 violate the continuing duty of loyalty even if the
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- 1 cannot assume a position hostile to the former client
- 2 and one inimical to the interests the lawyer previously
- 3 was engaged to protect. Am I correct in assuming that
- 4 in your opinion those are two separate situations?
- 5 A No. I don't think that's right. The -- there
- 6 are -- let me try to do it this way.
- 7 Q Sure.
- 8 A There are two continuing duties. A narrow
- 9 continuing duty of loyalty and a continuing duty of
- 10 confidentiality. Typically, the confidentiality issue
- 11 trumps everything else because, typically, in
- 12 disqualification motions, it's all that the court needs
- 13 to look at in order to determine whether the law firm
- 14 will be disqualified, but as the -- which sentence is
- 15 this? It's the final -- the long final sentence which
- 46.1
- 16 is roughly one, two, three -- the fifth sentence of that
- 17 paragraph I think. The long one. What that does is to
- 18 summarize that even if there is no confidential
- 19 information, the duty of loyalty does exist. It's --
- 20 it's not common for there to be a loyalty duty without
- 21 confidentiality but it does exist, and the two duties
- 22 have historically been recognized as being distinct.
- 23 Q And in this case, you didn't find any evidence
- 24 that Wick Phillips was misusing confidential
- 25 information, correct?

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- 1 lawyer possesses no confidential information of a former
- 2 client. An attorney who has acted as such for a former
- 3 client cannot render professional services adversely to
- 4 the former client in the same or substantially related
- 5 matter nor, in any event, whether it be in the same
- 6 matter or not, can the lawyer assume a position hostile 7 to the former client and one inimical to the interest
- 8 the lawyer previously was engaged to protect." Did I
- 9 read that correctly?
- 10 A You did.
- 11 Q All right. I want to ask you some general
- 12 questions about the statements of law that you put in
- 13 there.
- 14 A Sure.
- 15 Q And, again, Mr. Kehr, I don't want to put words
- 16 in your mouth, and I'm going to ask you these questions
- 17 knowing this is your shot to tell us what we did wrong.
- 18 Okay? So I want you to correct me if I say anything
- 19 wrong. But the way that I read that is that you
- 20 essentially identify two different situations there. I
- 21 read that one situation that you have a problem with is
- 22 an attorney who renders professional services adversely
- 23 to a former client in the same or substantially related
- 24 matter and then the second situation that you identify 25 is, whether it be in the same matter or not, the lawyer
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- 1 A My view is that there is no confidential
- 2 information that I'm aware of, because there would have
- 3 been joint lawyer-client relationship, and in a joint
- 4 relationship, each client -- I'm sorry. The lawyer has
- 5 the same duty of full disclosure and loyalty to each
- 6 jointly represented client, and that means that the
- 7 lawyer cannot favor the interest of one joint client
- 8 over the other. So if the common lawyer obtains9 material information about the engagement from one
- 10 client, the lawyer probably is obligated to share that
- 11 information with the other joint client.
- 12 Q And you didn't find that in this case, correct?
- 13 A I -- I don't understand your question.
- 14 Q You didn't find any violation of the duty of
- 15 confidentiality in this case related to Wick Phillips,
- 16 correct?
- 17 A No. I'm not aware of any evidence that there
- 18 is any confidential information as between the jointly
- 19 represented clients.
- 20 Q Right.
- 21 A A law firm in a joint representation owes an
- 22 equal duty to each client to maintain the
- 23 confidentiality. So that would go only to the outside
- 24 world. It wouldn't go to the sharing of information
- 25 between the jointly represented clients.

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- 1 Q Right. And my question was, you didn't find
- 2 any evidence that Wick Phillips violated any duty
- 3 related to that sharing of confidential information,
- 4 correct?
- 5 A Correct.
- 6 Q All right. So that's -- and can you and I
- 7 agree that that's Texas Rule 105?
- 8 A Well, not exactly. The duty of confidentiality
- 9 is in 1.05, but you don't need to look -- I'm sorry.
- 10 You can't look only at 1.05 to understand the interplay.
- 11 Part of the concept here is that the duty of loyalty to
- 12 each jointly represented client which is not in 1.05,
- 13 but is an underlying fiduciary duty of lawyers prohibits
- 14 the lawyer from favoring the interests of any one joint
- 15 client. So that's what creates the sharing of
- 16 information as a general principle, and that would be
- 17 true in every jurisdiction.
- 18 Q You didn't find a violation of Texas Rule 1.05
- 19 in this case, correct?
- 20 A Correct.
- 21 Q All right. And, in fact, if I understand
- 22 your -- the summary of your opinions correctly, your
- 23 primary criticism is a violation, in your opinion, of
- 24 Texas Rule 1.09, correct?
- 25 A Correct.

1

1 A Okay.

- 2 Q Because the way I read that sentence was that
- 3 you were identifying two possible scenarios, and you
- 4 disagreed with that. So I want to investigate that a
- 5 little bit because that's -- I read it differently than
- 6 apparently how you mean it. I read that as two
- 7 scenarios. One is that a lawyer cannot render
- 8 professional services adversely to the former client in
- 9 the same or substantially related matter. That's one
- 10 scenario. And then the second scenario would be whether
- 11 it's in the same matter or not, a lawyer cannot assume a
- 12 position hostile to the former client and one inimical
- 13 to the interest the lawyer previously was engaged to
- 14 protect. Is that not two scenarios?
- 5 A Well, I think it is, but it's a highly unusual
- 16 situation for there to be a violation of the duty of
- 17 loyalty without the lawyer undertaking a representation
- 18 in the same or substantially related matter. There are
- 19 instances in which -- that would be outside that. And
- 20 this summary, which is actually a quotation from a case
- 21 or pretty close to a quotation from the case, covers the
- 22 water front. A -- what I thought was a rather
- 23 well-written summary of how these two duties -- two
- 24 former clients operate.
- 25 Q I -- I understand and that -- and that's why

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- Q And you are stating and you stated earlier
- 2 today, that the obligation under Texas Rule 1.09 has, as
- 3 it's basis, the fiduciary duty that lawyers owe to
- 4 clients, correct?
- 5 A I'm sorry. Would you say that again? It
- 6 didn't quite track for me.
- 7 Q Absolutely. You stated earlier today, and I
- 8 think even in your answer just now that the limitations
- 9 of 1.09 on what a lawyer can or cannot do, are informed
- 10 and, in fact, based in a lawyer's fiduciary duty to it's
- 11 client's, correct?
- 12 A Duties. Plural. Yes.
- 13 Q I said plural. I'm not -- I'm not trying to
- 14 trick you, sir.
- 15 A It came through as a singular. I think there
- 16 must have been -- the S was chopped off by the
- 17 electronics but yes. The answer is yes.
- 18 Q Okay. Fair enough. So your primary criticism
- 19 in this case of my firms conduct is a violation of rule
- 20 .109 [sic], correct?
- 21 A 1.09. Yes.
- 22 Q All right. Thank you. Now, I'm going to back
- 23 up because I asked you a question earlier about that
- 24 long sentence at the end of the first bullet point. So
- 25 take a look at it again.

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- 1 I'm asking you the question, Mr. Kehr, is because I want
- 2 to make sure that I have the entire universe of what
- 3 you're criticizing Wick Phillips about. So I -- and I
- 4 will give you the opportunity by asking you an open
- 5 ended question. Based on that second sentence, what of
- 6 the duties of loyalty do you think Wick Phillips
- 7 violated? Is it -- did they render professional
- 8 services adversely to the former client in the same or
- 9 substantially related matter? Or did they assume a
- 10 position hostile to the former client and one inimical
- 11 to the interest the lawyer previously was engaged to
- 12 protect? Or was it both?
- 13 A Well, I -- I don't draw any distinction among
- 14 those three elements in my analysis. It doesn't make
- 15 any difference whether one were to consider that the
- 16 position that your firm is in now in the -- in it's
- 17 creditors claim is the same matter as the prior
- 18 engagement whether it would be considered substantially
- 19 related or it's simply taking the position that is
- 20 hostile to the interests it was formerly engaged to
- 21 protect. It -- it's irrelevant to the analysis to
- 22 determine which of those it is.
- 23 It's my view that it's the same matter, but my
- 24 opinion doesn't depend on the court determining that
- 25 it's the same matter. I mean, if I were a judge, I -- I

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- 1 wouldn't pause over the question of whether it's the
- 2 same matter, substantially related, or simply hostile.
- 3 The question is -- or the answer, in my view, is the
- 4 same anyway that you want to look at it. But, again, I
- 5 view it as being the same matter.
- 6 Q And you're getting to the heart of this -- this
- 7 line of questioning, Mr. Kehr, so I appreciate that
- 8 because your position is that my firm's representation
- 9 in this adversary proceeding is the same or
- 10 substantially related matter to the previous
- 11 representation, correct?
- 12 A Yes.
- 13 Q My hypothetical is, let's say the court says,
- 14 no. It was not the same or substantially related
- 15 matter. Is it going to be your testimony that we still
- 16 violated rule 109?
- 17 A Yes.
- 18 O Why?
- 19 A Because the creditor's claim and the effort to
- 20 reallocate ownership interest is hostile to the
- 21 interests that the firm previously was engaged to
- 22 protect in advance.
- 23 Q Do you thank that a law firm cannot take a
- 24 position hostile to a former client even if the matter
- 25 is not the same or substantially related?

- 1 And so we have this situation where a lawyer is
- 2 rendering services adversely to the client in the same
- 3 or substantially related matter, and what I'm taking
- 4 from your testimony is, yes, that's a no-no. You can't
- 5 do that. All right. But you're saying it's broader
- 6 than that. That even if it wasn't the same or
- 7 substantially related matter, there is a second
- 8 component to this according to this case you quoted.
- 9 That second component being, even if it's not the same
- 10 or substantially related matter, that the lawyer could
- 11 still be violating Texas Rule 1.09 if it takes a
- 12 position hostile to the former client and one inimical
- 13 to the interest the lawyer previously was engaged to
- 14 protect. So it's broader than just the same or
- 15 substantially related matter, rule, correct?
- 16 A Right. And the distinction that I was trying
- 17 to explain a moment ago is the lawyer doesn't even need
- 18 to have a client. If the lawyer has a client, the
- 19 lawyer has been engaged by someone in a matter that is
- 20 the same or substantially related to the prior
- 21 engagement. That would be virtually every situation.
- 22 But one could imagine a situation in which the lawyer
- 23 doesn't even have a client but is acting in a way that
- 24 is hostile to the interest it previously was engaged to
- 25 protect or advance.

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- A Well, as this -- as this quote says, hostile to
- 2 the interest the lawyer previously was engaged to
- 3 protect. That I view as just being the, kind of,
- 4 umbrella statement that probably includes every matter
- 5 in which the lawyer is engaged in the same or
- 6 substantially related matter, but I think one difference
- 7 might be if the lawyer doesn't even have a lawyer-client
- 8 relationship is not acting as a lawyer but is acting in
- 9 some other way that is hostile to the interest that the
- 10 lawyer previously was engaged to protect or advance.
- 11 Q All right. Let's -- let's --
- 12 A You're trying to -- you're looking at an
- 13 analytical distinction that I don't think has any
- 14 application here. I think it's sufficient to say same
- approacion nere: 1 timin it 8 sufficient to say sume
- 15 or substantially related, and -- but -- but the summary
- 16 that this court used in that final phrasing tells us
- 17 that you don't have to -- I'm sorry. That the law firm
- 18 doesn't have to have a client in the same or
- 19 substantially related matter. It's broader than that.
- 20 Q And I understand that's what you're saying, and
- 21 that's what I'm trying to flush out, Mr. Kehr. I'm
- 22 under no illusion that I'm going to convince you to be
- 23 on my side on this. All right? But my question is --
- 24 I'm trying to define, for the sake of the record, the
- 25 interests that you were saying were violated, right?

- 1 Q Okay.
- 2~ A  $\,$  So I -- I just -- I don't think that last
- 3 sentence really adds anything in this situation because
- 4 Wick Phillips does have a client. It is engaged by that 5 client. And the question is whether the engagement is
- 5 chem. And the question is whether the engagement is
- 6 adverse to the former client with regard to the subject
- 7 of the former representation.
- 8 Q What -- and you know what? I don't know that I
- 9 disagree with you, Mr. Kehr, because I think you're
- 10 going to agree with me that our position is going to be
- 11 our previous representation is not the same or a
- 12 substantially related matter. And the reason I'm asking
- 13 you these questions is not to pick on you, but to say if
- 14 the court says, you know what, Wick Phillips' previous15 representation was not the same or substantially related
- 16 matter. Is it going to be your opinion that we still
- 17 violated rule 109?
- 18 A The answer is yes.
- 19 Q And I'm asking you why?
- 20 A Well, this gets into a whole other element of
- 21 my analysis. What Wick Phillips has been attempting to
- 22 do is to -- to use a word that popped up in one of the
- 23 depositions. It's attempting to silo it's
- 24 representation. The silo concept was that it was

25 involved in the drafting and in providing legal advice

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- 1 with regard to the Bridge Loan. It was not involved in
- 2 the drafting or providing advice with regard to the --
- 3 the LLC agreement in which the ownership interests were
- 4 stated. And -- and, therefore, they are separate
- 5 matters, and my view is that they are not separate
- 6 matters.
- 7 They're part of a single transaction. The
- 8 single transaction included probably many dozens of
- 9 individual instruments, and they all existed for the
- 10 single purpose of acquiring 20 or 30, whatever the
- 11 number was, pieces of real property. The Bridge Loan
- 12 existed because, at least initially, Highland Capital's
- 13 credit was needed for the banks to make the loan, and
- 14 without that loan, the acquisition couldn't have taken
- 15 place. The -- the LLC agreement -- the multi --
- 16 multifamily -- SE Multifamily, whatever the name of it
- 17 is, LLC, agreement wouldn't have existed but for the
- 18 need for Highland's credit. The Bridge Loan wouldn't
- 19 have existed except for the other agreements. All of
- 20 them are part of a single transaction, and I don't think
- 21 that any of the law firms involved in the circumstances
- 22 are in a position to be adverse to any of the work that
- 23 they did previously.
- So if there is a law firm, I don't know who it
- 25 was, that provided advice on income tax consequences, it Page 66

- 1 remember is the same or substantially related.
- 2 Q Okay. But if it's not the same transaction,
- 3 then your back up position would be, well, it's at least
- 4 substantially related, and therefore Wick Phillips is
- 5 disqualified under that ground, correct?
- A That's correct. I view this -- if I may just
- 7 extend this a bit. I don't view the difference between
- 8 the same or substantially related as being meaningful.
- 9 The standard is the same. One doesn't have to conclude
- 10 it's the same as opposed to substantially related to
- 11 result -- I'm sorry. To reach the same result. My own
- 12 analysis is it's the same transaction.
- Q I understand. And I think you've been very
- 14 clear, Mr. Kehr, and I'm -- again, I'm not here to
- 15 convince you otherwise, but I am here to test what
- 16 your -- what your opinions are. You understand that,
- 17 right?
- 18 A Of course.
- 19 Q Okay. So I think coming from our same line, if
- 20 the court finds that this was not the same or
- substantially related, then your opinion fails and it's
- not a violation of 109, correct?
- 23 A Well, no. You still have the concept of
- 24 hostile to the interests.
- 25 Q Okay. And that's where -- I'm trying to make

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- 1 is not in the position, assuming that it's a former
- 2 client situation rather than a current client situation,
- 3 I should make that assumption with all of my explanation
- 4 here. So if there is a law firm that provided advice to
- 5 this overall transaction to any of the clients, to any
- 6 client whether it was Highland or any of the other
- 7 participants, or provided advice with regard to
- 8 hazardous material issues with regard to any of the 9 properties, or provided advice on any other topic that
- 10 was part of the overall package, that law firm cannot
- 11 now be adverse to the former client with regard to this
- 12 transaction.
- Q Right. Doesn't that conclusion require the
- 14 fundamental premiss that this was a single integrated
- 15 transaction?
- 16 A Yes.
- Q Okay. So, again, hypothetical, if the court 17
- 18 finds this was not a single integrated transaction then
- 19 your theory fails, correct?
- 20 A I agree with that. I view it --
- 21 Q Okay.
- A -- It -- it's the same transactions. Then the
- 23 back up question is whether it's substantially related.
- 24 I view it as being a single transaction but the -- the
- 25 rule in Texas and everywhere else so far as I can

- 1 that distinction. I'm trying to see how far you're
- 2 going to go, right? And so if it's not the same or
- 3 substantially related, then you've got this back up,
- 4 kind of, catch all of hostile to the former client
- 5 inimical to the interest standard, right?
- A Right. Part of that whether you look at it as
- 7 the same transaction or substantially related or just
- 8 other hostility is the concept that a lawyer cannot seek
- 9 to undercut the -- the validity of the work that the
- 10 lawyer previously did for the client. That's part of
- 11 the duty of loyalty. It's not the entire duty of
- 12 loyalty, but it's one prong of the duty of loyalty so --
- Q I understand what you're saying, Mr. Kehr, but
- 14 that's kind of -- that's my question. I've got a couple
- 15 questions about this. The first thing -- well, let me
- 16 back it up. You said you were quoting a case here.
- 17 What case are you quoting as to this standard?
- A I think that -- that language -- the -- that
- 19 long sentence comes from a 19th Century case called, In
- 20 Re Boone.
- 21 Q Can you spell that please?
- 22 B-O-O-N-E.
- 23 All right. And what jurisdiction is that Boone
- 24 case from?
- 25 A It's a -- it's a federal case that preexisted

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- 1 the current Courts of Appeal. The current -- what is
- 2 it? 11 circuits of Courts of Appeal. It's before the
- 3 federal courts were aligned that way.
- 4 (Simultaneous speakers)
- 5 Q I understand. That wasn't my question. You
- 6 said it was a 19th Century case meaning that it was an
- 7 1800's case?
- 8 A Correct.
- 9 Q Okay. And do you know what court issued the
- 10 opinion that you're quoting here for this standard?
- 11 A It is what was then called the Circuit Court
- 12 for Northern District of California and the site is 83
- 13 Fed 944.
- 14 Q So 83 Fed meaning the first version of the
- 15 federal reporter and we're now on --
- 16 A Correct.
- 17 Q -- I think the fourth version, right?
- 18 A That's right.
- 19 Q All right. So it was a long time ago. You
- 20 agree with me on that, right?
- 21 A I do.
- 22 Q Okay. And it was from California and not from
- 23 Texas, correct?
- 24 A It was from a federal court in California.
- 25 Yes. And it cites other older cases.

1 your opinions to me, and you would agree, it's a broader

- 2 duty than just the same or substantially similar
- 3 transaction, correct?
- 4 A Well, I just don't see any -- the difference
- 5 you're trying to draw I can't live with. There -- these
- 6 are all the same concept --
- 7 Q Well, let me ask you --
- A -- And the concept is whether you look at it as
- 9 the same or substantially related, the loyalty concept
- 10 is that the lawyer cannot attack the matter on which he
- 11 previously was engaged by former client, and sometimes
- 12 that's phrased as attacking the lawyers own work.
- 13 Sometimes under the specific facts of a -- of an
- 14 opinion, that comes into play, but it's a more
- 15 generalized concept.
- 16 Q I understand that, Mr. Kehr. Five minutes ago
- 17 you told me that the second dependent clause in that
- 18 quote was broader than the same or substantially related
- 19 matter concept. Do you remember that?
- 20 A I do. But you're -- you're missing the reason
- 21 for the distinction. The reason for the distinction is
- 22 that one can imagine situations in which the lawyer or
- 23 law firm doesn't even have a client. So it's -- it's
- 24 not -- in a representation, the question is -- is it the
- 25 same or substantially related, but one could imagine

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- Q I understand. Can you tell me the year that
- 2 was issued?
- 3 A 1897.
- 4 Q All right. So Texas was admitted as a state of
- 5 the Union, and, in fact, by then had succeeded and come
- 6 back after the Civil War, correct?
- 7 A Yes.
- 8 Q All right. Is there a reason you're using a
- 9 standard for disqualification from an 1897 case out of
- 10 California Federal Court rather than using, for
- 11 instance, a Texas Supreme Court case from somewhere
- 12 closer to the 22nd Century? 21st -- 21st Century.
- 13 Yeah. We're in the 21st.
- 14 A I won't tell anyone you don't know what century
- 15 it is.
- 16 Q You know, I went to law school because I can't
- 17 count.
- 18 A It will be our secret. There are lots of Texas
- 19 authorities. I happen to like the rather poetic
- 20 phrasing of In Re Boone, but I can -- one well-known
- 21 Texas authority was cited by the Pachulski firm in its
- 22 original brief. It's the American Airlines case.
- 23 You'll find language in that.
- 24 Q Well -- but this language that you've quoted --
- 25 or I'm sorry. That Mr. Brown quoted in the summary of Page 71

- 1 non-representative situations in which a lawyer is2 attacking work previously done for a former client, and
- 3 as I said before, it's going to be extremely rare, but I
- 4 think that the generalized statement and the In Re Boone
- 5 decision captures that broader concept.
- 6 In our situation, you don't have to go beyond
- 7 that because your law firm does have a client, and it's
- 8 possible to analyze whether the current representation
- 9 on the creditor's claim is in the same or substantially
- 10 related matter to the prior representation.
- 11 Q I understand that, Mr. Kehr, but it goes back
- 12 to a question I asked you previously. If the court
- 13 finds it was not the same or substantially related
- 14 matter, you're still going to say that we're
- 15 disqualified. So it would have to be under this second
- 16 text, correct?
- 17 A I'm not going to say you're disqualified.
- 18 That's a judicial decision. What I'm going to say is
- 19 that the same duty of loyalty issue arises without
- 20 regard to how one categorizes it. What -- what exists
- 21 in my view is that your law firm is acting in a way that
- 22 is adverse to its former client with regard to the
- 23 subject of the former representation.
- Q And if it's not the subject of the former
- 25 representation, it's going to be your position there is

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- 1 still a violation of rule 109 because we were taking a
- 2 position hostile to the former client and one inimical
- 3 to the interests that we were previously engaged to
- 4 protect, correct?
- 5 A Well, I'm not certain I can go quite that far
- 6 because it -- it -- it -- there is a representation.
- 7 You know, again, I've said this I guess twice before.
- 8 But I view the broader statement as being a fair summary
- 9 of the narrower statement, but it does include that, you
- 10 know, unusual situation, highly unusual situation, in
- 11 which there is no current representation.
- 12 Q Does the broader statement, the second part of
- 13 this, the -- the lawyer cannot assume a position hostile
- 14 to the former client and one inimical to the interests
- 15 that the lawyer was previously engaged to protect, that
- 16 doesn't appear in rule 109, correct?
- 17 A That's correct.
- 18 Q It appears in In Re Boone from 1897, correct?
- 19 A Well, I think it -- it exists in other places
- 20 too.
- 21 MR. MARTIN: Objection. Nonresponsive.
- 22 A It exists in the American Airlines case.
- 23 O Those words exist in the American Airlines
- 24 case?
- 25 A Not those words. That concept. And there are

- 1 the opposition --
- 2 MR. MARTIN: I understand.
- 3 MR. BROWN: -- Of Wick Phillips. But just for
- 4 clarity.
- 5 MR. MARTIN: And, Mr. Brown, I'll stipulate I
- 6 saw that email. I'm not disputing that those were also
- 7 part of the documents he reviewed. That's not what I'm
- 8 going to ask him about, but thank you for the
- 9 clarification. Mr. Kehr, do you have Exhibit 3 up in
- 10 front of you?
- 11 A I do.
- 12 Q Can you identify where Exhibit 3 lists In Re
- 13 Boone from 1897?
- 14 A I didn't understand that that was the purpose
- 15 of this list. This list documents. It doesn't list
- 16 cases or advisory ethics opinions.
- 17 Q I was going to ask you that next. It doesn't
- 18 list American Airlines case. It doesn't list the ethics
- 19 opinions, correct?
- 20 A I think that's correct.
- 21 Q All right. So if I was going to test your
- 22 interpretation of these cases and test your
- 23 interpretation of the opinions, I don't have the
- 24 opportunity to do that because I don't know what you've
- 25 looked at, right?

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- 1 a number of other cases. There is a Texas advisory
- 2 ethics opinion that has the broader concept.
- 3 Q Okay. Mr. Kehr, I was going to ask you about
- 4 this in a little while, but I noticed in the
- 5 documents -- well, first of all, Madam Court Reporter,
- 6 do we have Exhibit 1 marked?
- 7 THE REPORTER: Yes.
- 8 (Exhibit No. 3 was marked for identification.)
- 9 Q Okay. I'm going to come back to that. Let's
- 10 go to Exhibit 3 real quick. Mr. Kehr, Exhibit 3 is a
- 11 list that was provided to us by Mr. Brown of the
- 12 documents that were considered by you in connection with
- 13 this Motion to Disqualify. Do you see that?
- 14 A I do. I have it on my -- my screen on my
- 15 computer here.
- 16 Q Perfect. Have you seen this document before?
- 17 A I think I saw it for the first time yesterday.
- MR. BROWN: Grant, excuse me for just a minute.
- 19 I just wanted to add that we also sent Lauren a
- 20 letter -- I'm sorry. An email after we sent this that
- 21 added to this list with greater declaration and the
- 22 attached exhibits which was framed as an appendix and
- 23 was filed under seal as one additional document with the
- 24 attachments which Mr. Kehr considered, and it -- I mean,
- 25 it could be part of this list, because it was part of

- 1 A I -- I think that's a rhetorical question.
- 2 MR. BROWN: I'm going to object to this line of
- 3 questioning to the extent -- to the extent it applies
- 4 that there was an agreement to produce authorities.
- 5 That's not the case. We agreed to produce documents
- 6 that Mr. Kehr relied on. We did not agree in our
- 7 stipulation to produce authorities or to list
- 8 authorities.
- 9 MR. MARTIN: Mr. Brown -- Mr. Brown, is it your
- 10 position that under rule 26 you don't have to produce
- 11 everything he looked at in evaluating this and rendering
- 12 his opinions?
- MR. BROWN: We agreed to produce documents not
- 14 authorities.
- MR. MARTIN: And so you don't think you have
- 16 the obligation to produce the authorities; is that
- 17 correct?
- MR. BROWN: That's correct. Neither party
- 19 produced any authorities.
- 20 MR. MARTIN: Objection. Okay. That's fine.
- 21 You're on the record. Anything else, Mr. Brown, before
- 22 I actually ask your witness a question?
- 23 Q Mr. Kehr, you would agree with me that courts
- 24 sometimes disagree about what cases say, correct?
- 25 A Yes.

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- 1 Q And, in fact, even Supreme Court has majority
- 2 opinions and sense that can disagree about specific
- 3 provisions that a case might turn on, correct?
- 4 A Correct.
- 5 Q So if you and I were looking at the same
- 6 advisory opinions, you and I might have a different
- 7 interpretation of those advisory opinions, correct?
- 8 A Agreed.
- 9 Q And you and I might have a different opinion
- 10 about what the American Airlines case says, correct?
- 11 A Of course.
- 12 Q You and I might have a different opinion as to
- 13 the affect of In Re Boone from 1897 has on rule 109 of
- 14 the Texas rules, correct?
- 15 A Yes.
- 16 Q So it's difficult for me to question you about
- 17 your assumptions without knowing what you looked at.
- 18 You agree with that, right?
- 19 A I think, again, this is a rhetorical question.
- 20 I don't want to get involved in your debate with
- 21 Mr. Brown about whether either of the parties violated
- 22 some agreement between them. It's --
- 23 (Simultaneous speakers)
- 24 Q I'm not asking you for that. Mr. Kehr, I
- 25 appreciate that, but I'm not asking you for that. I'm

- 1 cases or advisory opinions you looked at in reaching
- 2 your conclusions here today?
- 3 A I -- I couldn't possibly. I could read cases
- 4 and advisory ethics opinions and participated in writing
- 5 advisory ethics opinions for 40 years. Probably
- 6 slightly more than 40 years. So, I mean, the -- the
- 7 whole body of the -- roughly the 40 or so years that
- 8 I've been involved in the field of professional
- 9 responsibility, all of the work that I did on the two
- 10 commissions that wrote the California rules, all of that
- 11 comes into play.
- When Mr. Brown ultimately files his brief,
- 13 there will be some sampling of particular opinions that
- 14 he's going to view important for the courts
- 15 understanding, but my opinion is based on 40 years of
- 16 experience in the field.
- 17 MR. MARTIN: Okay. I'm going to object as
- 18 nonresponsive.
- 19 Q Mr. Kehr, can you identify which authorities
- 20 you consulted in reaching your opinions in this case in
- 21 the last three months?
- 22 A I couldn't give you a complete answer.
- 23 Q Could you give me a partial answer other than
- 24 In Re Boone and the American Airlines case?
- 25 A Yes. I recall looking at the restatement third

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- 1 asking you whether or not I can test your opinions about
- 2 what a Texas case does or does not say if I don't know
- 3 what you looked at. I can't, right?
- 4 A I don't agree with that. You can test my
- 5 opinion. I will tell you the reason I think what I
- 6 think, and you can find out everything you need to know
- 7 about what my analytical process is. Whether a
- 8 particular opinion supports or contradicts my opinion is
- 9 something for you and Mr. Brown to work out in your
- 10 filings that I understand are due in a couple of weeks.
- 11 But I'm not going to have a debate with you here about 12 what particular cases say. I would -- would be totally
- 13 incapable of doing that except by written materials. I
- 14 can't do that spontaneously. What I can do is explain
- 15 what my thought process is.
- 16 Q I understand that and you testified earlier
- 17 that you consider yourself an expert on the Texas rules.
- 18 You remember that?
- 19 A I do.
- 20 [Zoom audio interference]
- 21 Q [inaudible] -- On disciplinary rules is
- 22 interpreting cases and interpreting advisory opinions,
- 23 correct?
- 24 A Yes.
- 25 Q Can you identify as we sit here today what

- 1 of the law governing lawyers. I remember that offhand.
- 2 I recall the Texas advisory ethics opinion that I
- 3 mentioned a moment ago.
- 4 Q Do you remember which one that was?
- 5 A No. I don't remember the number.
- 6 Q Do you remember what it was about?
- 7 A I only remember that it is one of the sources
- 8 that talks about the lawyer and I'm going to -- these
- 9 are not the words of the opinion, but -- but a
- 10 paraphrase of the concept seeking to undo the lawyers
- 11 own work or attacking the lawyers own prior work.
- 12 Q What else?
- 13 A A fairly -- fairly common concern that pops up
- 14 around the country, and it's come up in any number of
- 15 cases and advisory ethics opinions.
- 16 Q What else did you look at?
- 17 A I can't tell you.
- 18 Q Okay. So as we sit here today, you've
- 19 identified everything that you can remember that you
- 20 looked at in interpreting the Texas rules to reach the
- 21 opinions you have in this case, correct?
- 22 A Yes.
- 23 Q All right. So I'm going to move on to
- 24 something else. Part of your opinions revolve around
- 25 this concept of -- that this was a single integrated

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- 1 transaction, correct?
- 2 A Yes.
- 3 Q All right. Now, I don't need to get into
- 4 another semantic discussion with you unless you find it
- 5 necessary after hearing my questions. But in my opinion
- 6 or in my mind, there is a difference between a single
- 7 integrated transaction and different representations of
- 8 a lawyer. Do you agree or disagree with that statement?
- 9 A I agree.
- 10 Q So you could have a single integrated
- 11 transaction and have different lawyers representing a
- 12 client in different parts of a single integrated
- 13 transaction, correct?
- 14 A I agree with that. Different lawyers in a
- 15 single law firm or different lawyers in different law
- 16 firms?
- 17 Q So, for example, if you had a law firm that the
- 18 client loves for whatever reason to do their finance
- 19 work.
- 20 A Excuse me. But I missed one word in your
- 21 question. Could you start it over again please?
- 22 Q Absolutely. I'm just giving you an example.
- 23 And one example I might have is that a client loves to
- 24 use certain -- certain law firm for their finance work
- 25 but doesn't use that lawyer for their intellectual

- 1 that rule 109 was still violated because the entirety of
- 2 it was a single integrated transaction or no?
- 3 A Well, because it's a single integrated
- 4 transaction and what your firm is doing is attacking the
- 5 effectiveness or validity of work it did before. What
- 6 you're -- what you're doing in my opinion is mixing the
- 7 concept of scope of representation, which is extremely
- 8 important, with the loyalty issue which is not limited
- 9 to the particular legal issues on which the lawyer
- 10 previously advised the client. The scope of
- 11 representation is essential for -- primarily for
- 12 malpractice purposes. Let's -- let's --
- 13 (Simultaneous speakers)
- 14 Q Go ahead. I'm sorry.
- 15 A Yeah. Let's just say to simplify the
- 16 discussion that there were ten law firms involved in
- 17 the -- what was it called? The unicorn transaction?
- 18 Q Project Unicorn.
- 19 A Yeah. And that one of them provided advice
- 20 about title insurance on properties that were being
- 21 acquired. And let's assume that the other nine law
- 22 firms provided no advice on that subject and that a --
- 23 that whomever or whichever their client was, didn't rely
- 24 on any of those other nine law firms to provide advice
- 25 on title insurance questions.

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- 1 property work, correct?
- 2 A Yes.
- 3 Q And so those lawyers perhaps in a single
- 4 transaction might have different representations. Their
- 5 scope of representation would be different, correct?
- 6 A Correct.
- 7 O And so, for example, if the lawyer -- if the
- 8 law firm doing the finance work doesn't have the
- 9 capability to do intellectual property work, then that
- 10 representation by definition would not involve
- 11 intellectual property, correct?
- 12 A Correct.
- 13 Q Now, I don't think I'm previewing anything that
- 14 anybody doesn't already know. You understand that my
- 15 firm is taking a position that we represented,
- 16 regardless of -- we'll get into it, who was represented,
- 17 but the representation of my firm was limited to the
- 18 loan agreement, right?
- 19 A Yes.
- 20 Q And you understand that that's our position,
- 21 correct?
- 22 A I do.
- 23 Q So if that is the case and the court finds that
- 24 we represented whoever you're talking about just for the
- 25 purposes of the loan transaction, it is your opinion

- 1 If there was malpractice on the title
- 2 insurance, then it's only that one law firm that
- 3 provided that advice that would be in jeopardy. That's
- 4 the scope of representation, and it's essential for
- 5 lawyers to carefully define the scope of representation
- 6 so that the client can not reasonably rely on the lawyer
- 7 to provide advice or representation with regard to any
- 8 other topic.
- 9 And as you said in your question, a lawyer
- 10 might not be competent to provide advice on some other
- 11 issue. The finance lawyer might not know anything about
- 12 IP issues or might know nothing about title insurance or
- 13 might know nothing about Delaware trusts or any number
- 14 of other issues that were involved in Project Unicorn.
- 15 And the prudent lawyer will also always carefully limit
- 16 the scope so there is no reasonable reliance, and there
- 17 is no potential risk and so that the client is protected
- 18 and will know who to look to, who to communicate with,
- 19 and so on.
- I view the loyalty issue as being a completely
- 21 unrelated analysis. The question is whether the lawyer
- 22 is acting in a way that's hostile to the former
- 23 representation.
- 24 Q Okay.
- 25 A Either the lawyers work in it or in some other

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1 fashion --1 each of the other jurisdictions. What your -- while 2 2 you're thinking about that, can we take our second (Simultaneous speakers) 3 Q But, Mr. Kehr, I think you're getting to the 3 break? I need to run down the hall. 4 heart of the matter --Sure. Let me ask one quick follow-up question 5 MR. BROWN: Excuse me. Can you let the witness 5 ---6 finish answering before you interrupt? A Of course. 7 7 MR. MARTIN: I didn't mean to interrupt him. I Q -- Because I have to object to that last 8 response as nonresponsive. Because what I asked you was 8 apologize. I --9 MR. BROWN: He wasn't finished. 9 it is your testimony that those nine firms taking an 10 10 action to undo whatever the title law firm did wrong (Simultaneous speakers) 11 MR. BROWN: Go ahead and finish, Mr. Kehr. 11 that that is a violation of Texas Rule 1.09? 12 A I -- actually, I thought I was, but please --12 A Well, that's only if the Texas rules are 13 please go ahead, Mr. Martin. 13 applicable. You might have a law firm that's in O Thank you, Mr. Kehr, and, again, my apologies 14 Illinois or Massachusetts or somebody else -- somewhere 15 else --15 if you believe that I interrupted you. I didn't think I 16 did either. So in your -- let's use your hypothetical 16 Q I'm asking --17 for a second so we're talking apples to apples. In your A -- That's involved in a transaction in some 17 18 hypothetical involving this title company that -- that 18 other jurisdiction. 19 committed alleged malpractice, right? You're saying the Q Yes, sir. I'm asking under Texas rules. It's 19 20 title -- that the law firm that did the title work was 20 your opinion that that scenario you painted is violative 21 in jeopardy, right? 21 of Texas Rule 1.09 if Texas rule 1.09 applies, correct? 22 A Yes. 22 A Correct. Q In your hypothetical, would any of those other 23 All right. Let's take a break. 24 nine firms be able to take some action to try to undo 24 A Thank you. 25 that title -- the work that that law firm did regarding 25 (Recess from 12:34 p.m. to 12:43 p.m.) Page 86 Page 88 1 title? Q All right. Mr. Kehr, we took a short break. 2 2 You understand you're still under oath? A No. 3 Q And why is that? Because it's the same Did you communicate with anyone during the 4 transaction? 5 break including Mr. Brown? 5 A Correct. Q Okay. So your view is because those ten firms 7 worked on that transaction, all ten of those firms are Q Excellent. All right. I want to go back to 8 barred by the -- by the duty of loyalty from attacking 8 what we've marked as Exhibit 1 which is the summary of 9 any parts of that transaction, correct? 9 your opinions. 10 A Correct. Without client consent. 10 A Give me one moment to get it back up on my Q I understand. And so -- and it's your view 11 screen. 12 that if one of those other nine firms took any other 12 Q Take your time. 13 action to try to undo that part of the transaction that 13 A Got it. Go ahead. 14 that would be a breach of their duty of loyalty, Q All right. I want to go to the second bullet 15 correct? 15 point. I'm sorry. I apologize. The third bullet point 16 16 right at the bottom of page three where it states, "Wick Q And you believe that that standard that you're 17 Phillips attempt to distinguish it's work for HCRE and 17 18 testifying to is the standards that are required under 18 Highland in the negotiation and drafting of the loan 19 Texas Rule 1.09, correct? 19 agreement from the work allegedly done by other lawyers 20 and law firms in connection with drafting the LLC A I think the answer would be the same whether we 21 were looking at the Illinois rules or the New York rules 21 agreement is not supported by well-settled ethical 22 or the California rules because all the phrasings are 22 standards or the Texas Disciplinary Rules of 23 slightly different. Texas does have a unique twist on 23 Professional Conduct." Did I read that correctly? 24 the phrasing of it's 109. The underlying concepts are 24 You did. 25 the same and will be found in the equivalent rule in 25 What did you rely on in reaching that opinion Page 89 Page 87

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- 1 other than what we've already discussed?
- 2 A I don't think there is anything else. I think
- 3 we've covered it.
- 4 Q Okay. Can you explain to me -- well, and you
- 5 didn't draft this summary. So what -- what I found
- 6 interesting there was the use of the phrase,
- 7 well-settled. Did you -- is that your phrase or
- 8 Mr. Brown's phrase?
- 9 A I don't know. But I do consider these concepts
- 10 all to be well-settled.
- 11 Q And you considered these concepts well-settled
- 12 based on the authorities that you've discussed, correct?
- 13 A Yes. I think that these are national standards
- 14 that prohibits a lawyer from being adverse to the former
- 15 client as we've discussed.
- 16 Q Right. And that includes the quote up above in
- 17 the first bullet point that you identified came from the
- 18 In Re Brown [sic] case, correct?
- 19 A Yes.
- 20 Q All right. Let me ask you another
- 21 hypothetical. If the court finds that that second
- 22 dependent clause from In Re Brown [sic] doesn't apply to
- 23 Texas Rule 109 then your opinion failed, correct?
- 24 A No. I don't think so unless I misunderstand
- 25 what you're pointing at, because you still have the same Page 90

- 1 attorney general. I think it's from an ethics
- 2 committee, but there is also other Texas authority.
- 3 Q And which are those?
- 4 A I -- I can't tell you offhand.
- 5 Q Okay. And those aren't listed in the -- what
- 6 you reviewed, correct?
- 7 A In -- in that disclosure we talked about
- 8 before?
- 9 Q Yes.
- 10 A No. That's a document disclosure not an
- 11 authority disclose.
- 12 Q I understand that. At no point have you
- 13 provided us the list of authorities you relied on in
- 14 reaching your opinions, correct?
- 15 A That's correct.
- 16 Q All right. Thank you. Let's now go to the
- 17 next bullet point on the next page. You state, "The
- 18 drafting of the LLC agreement, the 2018 joint
- 19 investment, the various steps needed to effect their
- 20 terms, and the drafting and the negotiation of the loan
- 21 agreement, and the various steps required to effect it's
- 22 terms including with respect to the preparation of
- 23 multiple separate documents, schedules, and exhibits
- 24 attached to the loan agreement comprise a single
- 25 integrated transaction. The subject of which was the Page 92

1 or substantially related matter.

- Q That's a fair point. So let me give you a
- 3 different hypothetical. Let's say that the court finds
- 4 that the representation of Wick Phillips was not in the
- 5 same or substantially related matter and finds that the 6 second part of that last sentence is not settled while
- 7 under Texas Rule 109, then your opinion fails, correct?
- 8 A Well, you still have the question of whether
- 9 what your firm is doing is attacking the work that it
- 10 previously did. Now, I -- I -- you're -- you're
- 11 attempting to create narrow distinctions here that I
- 12 don't see. I view all of these concepts of being
- 13 essentially the same loyalty duty to the former client,
- 14 but there still is authority, including Texas authority,
- 15 for the concept that a lawyer cannot attack the prior
- 16 work. The prior work included on the allocation --
- 17 representing the allocation to the lender and all of
- 18 that, and so there is still be that basis on which a
- 19 court might determine that disqualification would be 20 appropriate.
- 21 Q And the Texas authority you're relying on there
- 22 is the American Airlines case and the advisory opinion
- 23 for the attorney general that you identified earlier,
- 24 correct
- 25 A I think the advisory opinion is not from the

- 1 acquisition of the mortgaged properties and the
- 2 portfolio properties as defined in the loan agreement."
- 3 Did I read that correctly?
- 4 A Yes.
- 5 Q So if I was to summarize your previous
- 6 testimony, that bullet point addresses your concept that
- 7 because all of this was a single transaction, that
- 8 anybody that was involved in any step of this would be
- 9 disqualified from attacking any part of the transaction;
- 10 is that correct?
- 11 A Well, any -- any lawyer or law firm.
- 12 Q Yeah.
- 13 A Yeah.
- 14 O That's what I meant.
- 15 A Yes.
- 16 Q All right.
- 17 A I agree with that.
- 18 Q And you believe that that is called for and
- 19 required under Texas Rule 109, correct?
- 20 A I do.
- 21 Q All right. And you have reached that opinion
- 22 regardless of whether or not the scope of representation
- 23 of any individual law firm was limited, correct?
- 24 A Well, I would say I'd assume that the
- 25 representation of individual law firms was limited. I

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- 1 would say that's -- that's a fundamental assumption that
- 2 I'm making, and I'm prepared to assume that Highland did
- 3 not actually or reasonably rely on your firm for legal
- 4 advice or representation with regard to the drafting or
- 5 the negotiation of the LLC agreement.
- 6 Q Right. And actually that's a great point. I
- 7 wanted to get back to that. You mentioned it earlier,
- 8 and we didn't flush it out. You agree with me that
- 9 there is evidence in this case that Wick Phillips was
- 10 not involved in the negotiation drafting of the LLC
- 11 agreement, correct?
- 12 A Yes.
- 13 Q Do you have any evidence or anything to suggest
- 14 that Wick Phillips did, in fact, negotiate or draft the
- 15 LLC agreement?
- 16 A No.
- 17 Q And, in fact, there is evidence in this case
- 18 that another law firm and in-house lawyers from the
- 19 clients were the ones that actually negotiated and
- 20 drafted the LLC agreement, correct?
- 21 A Yes.
- 22 Q And your opinion that we are disqualified is
- 23 based on the fact that if we touched -- in laymen's
- 24 terms, if we touched any part of this transaction then
- 25 we can't attack any other part of the transaction,

- 1 connection was closer because it did.
- 2 Q In connection with the original loan documents,
- 3 right?
- 4 A Yes.
- 5 Q And that's when the first LLC agreement was in
- 6 effect, correct?
- 7 A At least then, yes. I'm not certain what your
- 8 firm did when the new investor came in.
- 9 Q Do you have any evidence that my firm was
- 10 involved in the allocations aspect of it after the
- 11 amended LLC agreement was entered into?
- 12 A I don't recall whether I've seen anything on
- 13 that, but I'm certainly prepared to assume that it did
- 14 not.
- 15 Q All right. So it's your testimony that even
- 16 assuming my firm did not touch the allocation issue
- 17 after the amended LLC agreement was entered into, that
- 18 our firm would still be disqualified because of it's
- 19 work on the original loan agreement, correct?
- 20 A Correct.
- 21 (Exhibit No. 2 was marked for identification.)
- 22 Q All right. Let's do Exhibit 2. Mr. Kehr, just
- 23 a couple of questions. This is your engagement
- 24 agreement with --
- 25 A Give me just one second to open it on my screen

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- 1 right?
- A Well, in part that's correct although you have
- 3 to keep in mind that the part that your firm did handle,
- 4 I think unquestionably handled, does involve the
- 5 allocation of ownership interests. You prepared
- 6 documents that made those representations and7 representations and warranties to the lenders. So you
- 8 did touch the allocation even if you didn't advise about
- 9 the allocation, it was among the things that you did.
- 10 So there were written representations and warranties by
- 11 the borrowers, plural, regarding that allocation.
- 12 Q Have you seen a notice that Wick Phillips
- 13 touched the allocations after the amended LLC agreement
- 14 was done?
- 15 A I mean, only that it was in the Bridge Loan.
- 16 So there would be a distinction between what your firm
- 17 did and our hypothetical firm that advised on title
- 18 insurance -- I'm sorry. Title issues. Not title
- 19 insurance but title issues with regard to one of the 20
- 20 or 30 properties.
- 21 Q I--I--
- 22 A -- That -- that law firm that looked at a title
- 23 report wouldn't have seen -- wouldn't have known about
- 24 and wouldn't have drafted a piece of paper that talked
- 25 about the allocation of ownership interests. Your firms
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- 1 so I can see all of it.
- 2 Q Take your time.
- 3 A Yes. That is my engagement agreement.
- 4 Q Right. And that's -- the addressee of that is
- 5 Mr. Seery, the CEO of Highland Capital Management,
- 6 correct?
- 7 A Correct.
- 8 Q And looking at this letter in the second
- 9 paragraph it states that your time is billed at \$775 per
- 10 hour; is that correct?
- 11 A Yes.
- 12 Q And Ms. Cohen, who I think you identified
- 13 earlier. Her time would be billed at \$575 per pour; is
- 14 that correct?
- 15 A Yes. Correct.
- 16 Q Has anyone else worked on this besides you and
- 17 Ms. Cohen?
- 18 A Well, I'm not certain that she has, but nobody
- 19 else would have.
- 20 Q Fair enough. That answered my question. Thank
- 21 you. Is \$775 an hour your normal billing rate?
- 22 A I don't really have a normal billing rate, but
- 23 it's in the range of what I am charging for expert
- 24 witness consultation and testimony.
- 25 Q And that's my question. Do you -- you charge a

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- 1 higher rate for expert witness work than in your normal
- 2 representation of clients providing legal services,
- 3 correct?
- 4 A Yes.
- And what's your normal rate for providing legal 5
- 6 services to clients?
- A It would be \$100 or more lower except with some
- 8 longterm clients who are billed at -- I think the lowest
- 9 rate for -- I've got some clients. One client in
- 10 particular I've had since about 1986, and I charge that
- 11 company I believe at 550.
- Q So your rates are higher for expert work, 12
- 13 right?
- 14 A They are.
- Q Let's go to -- Madam Court Reporter, I just
- 16 want to make sure as we go through this that I don't
- 17 miss anything. Can you please confirm that Exhibit 2
- 18 and 3 are marked as part of the record?
- THE REPORTER: They are. 19
- 20 (Exhibit No. 4 was marked for identification.)
- Q Thank you very much. Mr. Kehr, now I want to
- 22 go to Exhibit 4 which is a document that has now been
- 23 Bates labeled Highland underscore WPEP000014, and it
- 24 runs through Highland underscore WPEP000018.
- 25 A I have it open on my screen.

- 1 document when you received it?
- A I remember being told in a phonecall that there
- 3 had been a release of Highland Capital Management, LP,
- 4 from the Bridge Loan obligation, and I recall that
- 5 Pachulski Stang didn't at first have the document
- 6 although they understood it existed, and there was some
- 7 delay in getting it to me. I don't recall them saying
- 8 anything else about it.
- Q All right. Now -- all right. That document
- 10 doesn't relate to your opinions now in any way; is that
- 11 correct?
- 12 A Yes. That's correct.
- 13 (Exhibit No. 5 was marked for identification.)
- O All right. I want to go now to Exhibit 5, and
- 15 Madam Court Reporter, please mark Exhibit 4. Mr. Kehr,
- 16 I'm going to represent to you I'm not going to go
- 17 through the Bridge Loan agreement page by page. You're
- 18 welcome.
- 19 Α Everyone thanks you for that.
- 20 Q But it is part of your opinion --
- 21

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- 22 MR. BROWN: Brant, I think there may be some
- 23 self-interest involved there.
- Q A little bit. A little bit. I've got a
- 25 volleyball and football game to get to later today, and

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Q Thank you. I'm going to represent to you that

Q And you used this document as part of reaching

- 2 there was no Bates label in this -- on this document in
- 3 the production in the underlying adversary matter. So
- 4 how did you obtain this document?
- A Either from Mr. Brown or from one of his 5
- 6 colleagues.

1

7

- 8 your opinions in this case?
- A I think that's -- that's fair to say. I had to
- 10 think through the implications of this. So, yes, I
- 11 agree with you.
- Q Which of your opinions, if any, does this 12
- 13 document support? Why is this document important to
- 14 your opinions?
- A Well, I don't think it is. It's something I
- 16 had to think through. That doesn't support any of my
- 17 opinions. It doesn't undercut any of my opinions. It's
- 18 part of the -- it's part of the underlying factual
- 19 situation.
- 20 Q So does this -- I understand that you looked at
- 21 this document in reaching your opinions, but is it fair
- 22 to say that this document doesn't -- or it just has no
- 23 relevance whatsoever to your opinions?
- 24
- 25 Q Do you remember what you were told about that

- 1 I don't want to be here all night.
- 2 We've established that one of your opinions is
- 3 that the LLC agreement and the loan agreement and the --
- 4 and by -- let me -- hold on. Let me back up. You agree
- 5 with me that there is two LLC agreements involved in
- 6 this case, correct?
- You mean the original and the amendment?
- 8 Yes.
- 9 A Yeah. Okay.
- 10 Q All right. And as we go through these
- 11 questions, Mr. Kehr, I'm going to attempt to make a
- 12 distinction between the original LLC agreement and the
- 13 amended LLC agreement, and if I slip up and I don't make
- 14 that distinction or you think I'm missing something, I
- 15 want you to point it out to me. Okay?
- 16 A Yeah.
- Q All right. But I think it's your opinion in 17
- 18 this case that between the original LLC agreement and
- 19 the loan agreement, in your opinion, those were
- 20 certainly, in your opinion, part of a single integrated
- 21 transaction, correct?
- 22 A Yes.
- Q Is it your opinion that the subsequent amended
- 24 LLC agreement was also part of a single integrated
- 25 transaction?

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- 1 A Yes.
- 2 Q And that forms part of the basis of your
- 3 opinions in this case, correct?
- 4 A Well, I don't think it's -- it's significant
- 5 for my view of your firms duties, but if -- if we were
- 6 to imagine for a moment that a brand new law firm came
- 7 in to represent one of the parties to the amendment,
- 8 then that other law firm having had no involvement with
- 9 the original LLC agreement or with the Bridge Loan
- 10 agreement or with the many, many other underlying
- 11 elements to the -- to Project Unicorn, would have the
- 12 same loyalty obligation with regard to the entire
- 13 package.
- 14 O Well, let's talk about that for a second.
- 15 A Sure.
- 16 Q If a new law firm came in to negotiate and
- 17 draft the amended LLC agreement that Wick Phillips was
- 18 involved in the original loan agreement, which was
- 19 executed at the same time as the original LLC agreement,
- 20 your positions -- I think I understand your position is
- 21 that because Wick Phillips was involved in the original
- 22 loan agreement which necessarily involved the original
- 23 LLC agreement that at that point, at that snapshot in
- 24 time, Wick Phillips is barred from representing
- 25 interests against Highland later on no matter what,

- 1 least seven borrowers, correct?
- 2 A Correct.
- 3 Q And you agree with me that this loan agreement
- 4 is dated September 26th, 2018, correct?
- 5 A Dated as of September 26th, 2018, yes.
- 6 Q All right. And Mr. Brown and I covered this
- 7 earlier, but also part of the documents you reviewed
- 8 even if they're not on Exhibit 3 is what we've been
- 9 calling the appendix which included the unicorn purchase
- 10 and sale agreements of the underlying assets, correct?
- 11 A Yes
- 12 Q All right. So you saw the unicorn PSA's,
- 13 correct?
- 14 A I -- I didn't -- I don't think I really looked
- 15 at them, but they were available to me, and I think the
- 16 content of the individual purchase agreements was not
- 17 relevant to my analysis.
- 18 Q Tell me why that is.
- 19 A What's relevant to my analysis is that Wick
- 20 Phillips represented Highland with regard to the loan
- 21 agreement that was a portion of Project Unicorn.
- 22 (Simultaneous speakers)
- 23 Q What's the -- sorry. Go ahead.
- 24 A The other underlying elements of this such as
- 25 the way in which the Delaware Statutory Trusts were

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- 1 correct?
- 2 A With regard to Project Unicorn.
- 3 Q With regard to Project Unicorn.
- 4 A It would be adverse to Highland with regard to
- 5 other matters.
- 6 Q I understand. But if another law firm came in
- 7 and negotiated or drafted the amended LLC agreement and
- 8 a subsequent arose about the amended LLC agreement, it
- 9 is your opinion Wick Phillips would still be
- 10 disqualified because they were involved prior to the
- 11 amended LLC agreement in Project Unicorn, correct?
- 12 A Correct.
- 13 Q I guess I need to make it clear for the record.
- 14 I don't concede that I think you're right, but I think
- 15 you --
- MR. BROWN: Brant -- Brant, we can stipulate
- 17 that you're not conceding any of the positions that
- 18 Mr. Kehr is stating here unless you so state.
- 19 MR. MARTIN: Fair enough.
- 20 MR. BROWN: So you don't need to waste your
- 21 time or breath.
- 22 Q Thank you, Ken. All right. Talking about this
- 23 Bridge Loan agreement, Mr. Kehr. I'm assuming that part
- 24 of your opinion on the conflict here is based on the
- 25 fact that Highland Capital Management, LP, is one of at Page 103

- 1 drafted and what the purchase agreements for individual
- 2 properties said not relevant.
- 3 Q All right. Let me give you -- let me ask you
- 4 another question then. Let's assume that the DST's, the
- 5 Delaware Statutory Trusts, were set up as part of
- 6 Project Unicorn and the original PSA's. Are you with me
- 7 so far?
- 8 A I am.
- 9 Q And that Wick Phillips worked on the loan
- 10 agreement to set up that structure in September of 2018.
- 11 Okay?
- 12 A Very good.
- 13 Q Later, an entirely different property that was
- 14 not involved in the original Project Unicorn PSA's was
- 15 purchased and shoved by Highland underneath one of those
- 16 DST's. You with me so far?
- 17 A I'm not certain. I need you to repeat that.
- 18 Q Sure. I'm asking you to assume for the
- 19 purposes of this hypothetical that after September 26th,
- 20 2018, that there was another asset that was purchased by
- 21 a Highland entity and put under the ownership structure
- 22 of one of the DST's, and that that asset that was later
- 23 purchased had nothing to do with the original Project
- 24 Unicorn assets. Are you with me?

25 A I am.

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- 1 Q Under your opinion, I assume you are going to
- 2 say that because Wick Phillips represented parties in
- 3 connection with the loan agreement originally setting up
- 4 Project Unicorn, that an after acquired asset which was
- 5 later put into one of those entities, that Wick Phillips
- 6 would be disqualified from being adverse in that matter
- 7 as well, correct?
- B A I think that's probably correct. I -- I want
- 9 to try to chart this out. And I think I have some
- 10 related questions in order to be able to at least
- 11 mentally chart it out. Was the later acquisition
- 12 related to the Bridge Loan in any way?
- 13 Q I'm saying no. Under my hypothetical, the
- 14 answer to that question would be no.
- 15 A And your hypothetical is that -- that Highland
- 16 Capital Management, LP, acquired another property
- 17 unrelated to the 20 or 30 involved in Project Unicorn in
- 18 September of 2018 but put it into the SE Multifamily?
- 19 Q Yes. That is my hypothetical.
- 20 A I have to think about that one.
- 21 O All right. And -- and let's put a -- kind of a
- 22 fine point on it. I'm -- I'm actually enjoying this
- 23 conversation. Let's say it was something completely
- 24 unrelated to Multifamily. All right. Let's call it --
- 25 you don't have these in California that much, but let's

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- 1 to do with an oil and gas lease of which by way there
- 2 are many in California.
- 3 Q Fair enough.
- A And -- and that's not related in any way that I
- 5 can see to the work that was done by your firm in and
- 6 around 2018. It's not the same LLC agreement. It's not
- 7 the same Bridge Loan.
- 8 Well, let's start with the Bridge Loan
- 9 agreement. That's the entry point. It's not the same
- 10 Bridge Loan agreement. It doesn't affect that -- it
- 11 doesn't affect anything about the work that you did.
- 12 It's not part of the -- the integrated project that I
- 13 see. You know, you -- if you look in the Bridge Loan
- 14 agreement, you'll see that there is a description of
- 15 purpose somewhere, and the purpose of the loan is to
- 16 acquire those 20 to 30 properties. It has nothing to do
- 17 with the later acquisition of an oil and gas lease and
- 18 in California or Alaska, or wherever it might be.
- 19 Q All right. But the acquisition of those
- 20 properties occurred on or about September of 2018,
- 21 correct?
- 22 A What's the antecedent for those properties?
- 23 The 20 or 30 you're talking about?
- 24 Q Yes.
- 25 A Yes. That's correct.

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- 1 call it oil and gas lease. Right? They got a producing
- 2 oil and gas lease, and they don't know where to put it
- 3 so they put it under SE Multifamily. It wasn't part of
- 4 Project Unicorn in September of 2018. It wasn't part of
- 5 the loan agreement. It wasn't anticipated by any of the
- 6 schedulers. My question to you is, would Wick Phillips 7 be disqualified from representing a party about that
- 8 transaction of the oil and gas lease?
- 9 A I think the answer to that one is probably not.
- 10 I'm finding -- I'm finding it difficult to see how
- 11 anyone would feel that -- that your firms being adverse
- 12 to Highland with regard to a later transaction not
- 13 involved in the -- the 2018 acquisitions or the Bridge
- 14 Loan could be considered as being part of the prior
- . -
- 15 representations.
- Q So how is it that the later changing of the
- 17 ownership allocations in the amended LLC agreement is
- 18 connected or related to my firms prior representation if
- 19 my firm had nothing to do with the amended LLC? What's
- 20 the difference between those two scenarios?
- 21 A Because this is the same Project Unicorn. If
- 22 the day after September 26 the parties agreed to make
- 23 some change, either a change with the lender or a change
- 24 among the borrowers, that's part of Project Unicorn.
- 25 It's still Project Unicorn. But your hypothetical had Page 107

- 1 Q All right. So I think my question is why does 2 a change of the ownership allocations seven months after
- 3 the acquisitions of the properties were included, why is
- 4 that any more related to the original acquisition than
- 5 the acquisition of an oil and gas lease?
- 6 A Well, because the Bridge Loan agreement still
- 7 exists. And -- and your firms work had to do with the
- 8 Bridge Loan agreement and the acquisition of the
- 9 properties and the agreements that went with the
- 10 acquisition of the properties all were part of a single
- 11 integrated transaction as I view it.
- 12 (Simultaneous speakers)
  - 13 O Sorry.
  - 14 A If there is a later transaction involving a
  - 15 different property financed in a different way, I'm
  - 16 finding the connection considerably thinner, and I think
- 17 it's unlikely that that would be viewed as a violation
- 18 of the duty of undivided loyalty.
- 19 Q How is it in your opinion that the change of
- 20 the allocations in this amended LLC changed the
- 21 underlying terms of the Bridge Loan?
- 22 A Well, I don't think it changed the underlying
- 23 terms of the Bridge Loan.
- 24 Q All right.
  - A A new investor came in and that resulted in a

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- 1 change in the allocations, but the loan still existed.
- 2 The promissory note still existed. It's still that same
- 3 integrated transaction. It's just been tinkered with a
- 4 bit.
- 5 All right. And the ownership allocations were
- 6 what were tinkered with, correct?
- A Yes. But I would view the same answer if it
- 8 turned out that while this agreement says that the
- 9 purpose of the loan is to finance the acquisition of the
- 10 20 or 30 properties, if one of the properties dropped
- 11 out or a new property was dropped in in it's place, and 11 doesn't change the fact that the purpose of the Bridge
- 12 do some tinkering with the Bridge Loan as a result of
- 13 that, you still have the same essential transaction.
- O I understand. I understand your opinion, and I
- 15 appreciate the clarification, sir. I want to move to
- 16 Exhibit 6.
- 17 (Exhibit No. 6 was marked for identification.)
- 18 A You skipped 205 pages, you know.
- 19 Q I know you're disappointed.
- 20 A Okay. And this one is even longer. I have it
- 21 up on my screen.
- Q All right. I'm going to represent to you that
- 23 this one is three separate PSA's. This is part of the
- 24 appendix which was provided to you that Mr. Brown
- 25 pointed out had been provided to you, and it wasn't on
  - Page 110

- 1 didn't consider the content of these PSA's in making
- 2 your opinion that the loan agreement and the LLC
- 3 agreement were a single integrated transaction, correct?
- 4 That is correct.
- Don't you think that's important? 5 Q
- 7 Q Why not?
- A Well, because as the Bridge Loan says, it's
- 9 purpose was to acquire a -- a portfolio of -- of
- 10 properties. The terms under which they were acquired
- 12 Loan was the acquisition, and that the acquisition
- 13 ultimately was for the LLC whose ownership interests
- 14 your creditor -- your client's creditor claim seeks to
- 15 adjust.
- 16 Q But the ownership allocation does affect the
- 17 Bridge Loan?
- 18 Well, it does.
- 19 How?  $\mathbf{O}$
- 20 Α But that's not -- that's not the reason for my
- 21 analysis.
- 22 Q Well --
- 23 A The reason for my analysis is that the Bridge
- 24 Loan and the LLC agreement were part of an integrated
- 25 transaction.

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- 1 the list, but we can agree that you saw it ahead of
- 2 time, right?
- A I had it available to me, but I did not really
- 4 look at it. I certainly didn't study it at all.
- Q All right. Would you -- so if I ask you a
- 6 question about one of these and you don't want to opine
- 7 on it or you don't want to confirm it, I want you to
- 8 point that out to me. Can you do that?
- A Of course.
- 10 Q All right. Because it's my understanding that
- 11 these PSA's, there is three of them in this one exhibit.
- 12 One starts on appendix page 7. The second starts on
- 13 appendix page 81, and the third one starts on appendix
- 14 page 150, but these PSA's were for the purchase of the
- 15 mortgaged properties and the portfolio properties. Do
- 16 you have that understanding or do you not?
- A That is my understanding. 17
- Q All right. And you would agree with me that
- 19 Highland Capital Management, LP, was not a party to the
- 20 PSA's, correct?
- A That's my understanding, although, again, I
- 22 haven't actually looked at all three of them to confirm
- 23 that but that's my understanding.
- Q All right. And so did you -- so since you
- 25 haven't really looked at them, I'm assuming that you

- Q I understand that but I'm asking you a
- 2 different question. So it's my understanding that the
- 3 client we're bringing that Mr. Brown is trying to
- 4 disqualify us from is to say that the ownership
- 5 allocation changed in the amended LLC agreement. That
- 6 change was wrong in some way, shape, or form, and we're
- 7 getting disqualified or we're attempting to be
- 8 disqualified from that, because somehow that change in
- 9 the ownership allocation was related to the work that we
- 10 did on the Bridge Loan. Can we agree on that?
- 11 A Yes.
- 12 Q All right. So my question to you is how does
- 13 the change in the ownership allocation affect the work
- 14 that was done on the Bridge Loan other than your view
- 15 that this was a single integrated transaction?
- A Well, I think the starting point is it was a
- 17 single integrated transaction, and what makes it a
- 18 single integrated transaction is that the Bridge Loan
- 19 existed for the purpose of the acquisitions.
- 20 Q Which occurred prior to the amending of the
- 21 LLC, correct?
- 22 A I'm sorry. Which occurred?
- The acquisition of the properties. The
- 24 acquisition of the underlying assets occurred prior to
- 25 the amendment of the LLC, correct?

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- 1 A I believe that's correct.
- 2 Q All right. And so the work on the loan
- 3 agreement from your prior testimony was, well, it's a
- 4 single transaction because the loan agreement was used
- 5 to purchase the underlying assets, right?
- 6 A Yes. That's fair enough.
- 7 Q Okay. And that work was done and then later --
- 8 in fact, seven months later, the LLC agreement was
- 9 amended, correct?
- 10 A Correct.
- 11 Q And it's your position that seven months later
- 12 when that LLC agreement was amended that that relates
- 13 back to the original Project Unicorn transaction such
- 14 that it was a single integrated transaction, correct?
- 15 A Well, my -- my recollection of the amendment is
- 16 that it says it relates back, but even if it didn't, my
- 17 answer would be the same.
- 18 Q And your answer would be yes, right?
- 19 A Yes. The LLC agreement still exists. It's
- 20 been amended but it's the same LLC agreement. It's the
- 21 same basic agreement, and the Bridge Loan still exists
- 22 and -- and it was -- the Bridge Loan was for the purpose
- 22 and and to the Bridge Beam that for the purp
- 23 of carrying out the purpose of the LLC agreement.
- 24 That's all one thing.
- 25 Q Did you take into account the lapse of time

1 duty of loyalty attached from there until eternity as it

- 2 related to Project Unicorn, correct?
- 3 A That is correct.
- 4 O And therefore since the amendment of the LLC
- 5 was related to Project Unicorn even though it was seven
- 6 months later, in your opinion, that duty of loyalty
- 7 still attached and therefore Wick Phillips can't
- 8 represent anybody in trying to unwind the amendment of
- 9 the LLC, correct?
- 10 A Correct.
- 11 Q All right.
- 12 THE REPORTER: Can you slow down, counsel?
- 13 Q Yeah. Go ahead.
- 14 THE REPORTER: I just said, can you slow down?
- 15 Q Yes, ma'am. Not the first or the last time
- 16 that's been said. I apologize. Mr. Kehr, are you aware
- 17 that the loan agreement was not the sole source of
- 18 funding to acquire the properties?
- 19 A Yes.
- 20 Q And, in fact, Freddie Mac also provided
- 21 financing, correct?
- 22 A I -- I don't recall knowing that it was Freddie
- 23 Mac.

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- 24 (Exhibit No. 14 was marked for identification.)
- 25 Q All right. All right. Let's go to -- do we

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- 1 between the original closing and the amendment of the
- 2 LLC in reaching the conclusion that this was a single
- 3 transaction?
- 4 A No. In my view, it's irrelevant.
- 5 Q So are you aware that there are courts that
- 6 consider the timing of two different transactions as a
- 7 contributing factor of whether or not a transaction is
- 8 considered a single integrated transaction?
- 9 A I think there -- no. No. I don't think I've
- $10\,$  ever seen that. Let me think about that for a moment.
- 11 Yes. I think that that's true as to whether there is an
- 12 integration. Yes.
- 13 Q Right. But you didn't take that into account
- 14 that the amendment of the LLC occurred seven months
- 15 after the original transaction, correct?
- 16 A I -- I didn't because I think that for my
- 17 purposes it's not relevant. It may be relevant for
- 18 other purposes in -- in contract interpretation, but
- 19 it's not relevant for purposes of my area analysis of
- 20 the loyalty duty that the law firms involved in the --
- 21 in the consummation of Project Unicorn have to their
- 22 clients or former clients in that project.
- 23 Q I understand. Because I think it's your
- 24 position that once Wick Phillips did work on that
- 25 original loan agreement, the Project Unicorn, that that

- 1 have Mr. McGraner's declaration? Fourteen. All right.
- 2 We're going to go out of order here for a second,
- 3 Mr. Kehr, and I'm going to show you -- hold on. Let's
- 4 go back to the title. Do you see a document on the
- 5 screen in front of you?
- 6 A Yes. And that's Exhibit 14?
- 7 O Yes.
- 8 A Okay. I've opened it on my computer.
- 9 Q Okay. This is a declaration from Matthew
- 10 McGraner. Do you know who that is?
- 11 A I'm afraid -- well, yes. Because it -- my
- 12 memory was -- was joggled by paragraph two. I probably
- 13 would have gotten the answer wrong if it hadn't said it
- 14 right in front of me. Senior vice president of
- 15 NexPoint.
- 16 Q Right. And that's -- NexPoint is the client
- 17 we're currently representing that Mr. Brown is trying to
- 18 disqualify us from representing. You understand that,
- 19 correct?
- 20 A Yes.
- 21 MR. BROWN: Hold on. Objection. Hold on,
- 22 Brant. I think that is a different entity. NexPoint
- 23 Real Estate Advisers is a different entity than we're
- 24 trying to disqualify you from representing as --

(Simultaneous speakers)

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- 1 Q All right. Mr. Kehr, let me ask it a different
- 2 way. Mr. McGraner's statement says that he's the
- 3 executive vice president for NexPoint Real Estate
- 4 Advisers, LLC, correct?
- 5 A It does.
- 6 Q It states that he's been an employee of NREA
- 7 since June of 2016, correct?
- 8 A Yes.
- 9 Q All right. And let me ask one question. Since
- 10 you had never heard of this transaction prior to June of
- 11 2021, you would agree with me that the persons involved
- 12 in the transaction and the representation of Wick
- 13 Phillips have personal knowledge of what happened and
- 14 you don't, correct?
- 15 A Of course. As an expert witness, I never have
- 16 personal knowledge.
- 17 Q Excellent. All right. I want to go to
- 18 paragraph six of Exhibit 14. Paragraph six states, "In
- 19 connection with and to help fund the Unicorn
- 20 Acquisition, Key Bank National Association and Freddie
- 21 Mac provided various financing the loans. Plural. One
- 22 such financing was a Bridge Loan with Key Bank for
- 23 approximately half of the purchase price. However, Key
- 24 Bank required additional borrowers on the Bridge Loan
- 25 and as a result, HCMLP, NexPoint Real Estate Partners,

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- 1 A It would be prevented from being adverse to
- 2 Freddie Mac with respect to Project Unicorn.
- 3 Q All right. That's a fair point. Let's say
- 4 that there was a borrower -- let me just pick one. Go
- 5 back to the appendix to the purchase and sale agreements
- 6 which I believe is Exhibit 6. So looking here on
- 7 Exhibit 6, we've got a purchase and sale contract, and
- 8 I'm going to pick one. Let's say Sof-X Monument
- 9 Holdings, LP, which is a party to this. Do you see
- 10 that?
- 11 A Yes.
- 12 Q Would their lawyers be prevented from attacking
- 13 the amended LLC agreement?
- 14 A If doing so would be adverse to the interests
- 15 of their former client.
- 16 Q All right.
- 17 A Assuming that it's a former lawyer-client
- 18 relationship.
- 19 Q And, in your opinion -- going back to the
- 20 PSA's. Is it important to you that the loan agreement,
- 21 the Bridge Loan agreement, didn't have the -- the
- 22 Highland entity as a party?
- MR. BROWN: Objection. Mischaracterizes the
- 24 loan agreement.
- 25 Q Do you know whether or not the conflicting

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- 1 LLC, formally known as HRCE Partners, LLC, and five
- 2 other entities were included as co-borrowers under the
- 3 Bridge Loan with NREP. NREP was the lead borrower under
- 4 the Bridge Loan agreement and the main point of contact
- 5 for the borrowing institutes." Did I read that
- 6 correctly?
- 7 A Yes.
- 8 Q But that does, in fact, indicate that Freddie
- 9 Mac was apart of the financing for Project Unicorn,
- 10 correct?
- 11 A It does.
- 12 Q Did you consider that in making your opinion
- 13 that the loan agreement and the LLC agreement were a
- 14 single integrated transaction?
- 15 A It's not relevant to my analysis that there
- 16 were other sources of financing.
- 17 Q Why is that? Once we touch the loan agreement
- 18 we were off limits?
- 19 A Because the loan agreement is, in my view, part
- 20 of the same transaction as the LLC agreement.
- 21 Q Right. And so under your analysis then, a law
- 22 firm that was representing Freddie Mac in one of those
- 23 other loans related to Project Unicorn would also be
- 24 prevented under Texas rule 109 from representing anybody
- 25 in connection with the amended LLC agreement, correct?
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- 1 entity, the Highland entity, was a party to the Bridge
- 2 Loan agreement?
- 3 MR. BROWN: Which -- which Highland entity?
- 4 Are you referring to the debtor, Grant --
- 5 MR. MARTIN: Yes.
- 6 MR. BROWN: -- Or another Highland entity?
- 7 MR. MARTIN: I apologize, Mr. Brown. Yes. I'm
- 8 referring to the debtor.
- 9 A Well, give me one moment.
- 10 Q Yeah. Take your time.
- 11 A Highland Capital Management, LP, is the first
- 12 listed borrower. Am I misunderstanding your question?
- 13 Not certain what you're driving at.
- 14 Q You may be. There is a bunch of documents and
- 15 sometimes, Mr. Kehr, honestly I get confused as well.
- 16 But I'm looking here at the Bridge Loan agreement which
- 17 is Exhibit 5.
- 18 A I am also.
- 19 Q All right. So we got Highland Capital
- 20 Management, LP. You see that?
- 21 A Yes. I do.
- Q We got HCRE Partners, LLC, the Dugaboy
- 23 Investment Trust, the SLHC Trust. All -- all of these
- 24 parties were parties to the Bridge Loan agreement,
- 25 right?

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- 1 A Right.
- 2 (Exhibit No. 7 was marked for identification.)
- 3 Q All right. I want to go to Exhibit 7.
- 4 THE REPORTER: Are you marking all of these,
- 5 counsel?
- 6 MR. MARTIN: Yes. I'm sorry. Yes, ma'am.
- 7 MR. BROWN: Brant, it's been another hour, and
- 8 at a convenient time, I would like to take another
- 9 convenience break.
- MR. MARTIN: Absolutely. Why don't we just do
- 11 that now.
- MR. BROWN: Okay. Five minutes?
- 13 MR. MARTIN: Sure.
- 14 (Recess from 1:27 p.m. to 1:36 p.m.)
- 15 Q Mr. Kehr, you understand you're still under
- 16 oath, correct?
- 17 A Yes.
- 18 Q All right. I want to move to Exhibit 7, and,
- 19 Mr. Kehr, if you're bringing it up on your computer, let
- 20 me know when you're there.
- 21 A I have it.
- 22 Q All right. You see Exhibit 7 is an email from
- 23 Paul Broaddus dated Thursday, August 23rd, 2018, to
- 24 Helen Kim. Copied on that is Matt McGraner, Mark
- 25 Patrick, Rick Swadley, and Jae Lee. Do you see that?

- 1 Q And you don't have any evidence that Wick
- 2 Phillips drafted the amended LLC agreement seven months
- 3 later, correct?
- 4 A Correct.
- 5 (Exhibit No. 8 was marked for identification.)
- 6 Q Madam Court Reporter, please mark Exhibit 7.
- 7 Let's go to Exhibit 8. Mr. Kehr, are you on Exhibit 8?
- 8 A I have it.
- 9 Q Have you seen this document before?
- 10 A Yes.
- 11 Q Did you use this document -- did you review
- 12 this documents in forming your opinions in this case?
- 13 A I looked at it, but it's not essential to my
- 14 opinions.
- 15 Q I understand. I'm going to ask you some
- 16 questions about it anyway. It's dated Thursday,
- 17 August 9th, 2018, at 12:58 p.m., correct?
- 18 A Yes.
- 19 Q And the author is Paul Broaddus, correct?
- 20 A Correct.
- 21 O And the addressees are Daniel Cullen at Baker
- 22 McKenzie, David Gong at Baker McKenzie, Peter Matejcak
- 23 at Baker McKenzie, and Brian Mitts and Bonner McDermett.
- 24 Did I read that correctly?
- 25 A Yes.

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- 1 A I do.
- Q I'm going to represent to you that none of
- 3 those people work for Wick, Phillips, Gould, and Martin.
- 4 Do you have any reason to dispute that representation?
- 5 A No.
- 6 Q All right. And Mr. Broaddus, and, in fact, I'm
- 7 going to represent to you that those were all internal
- 8 people. Mr. Broaddus says to Helen, "As discussed, can
- 9 you please form the following LLC's? SC Multifamily
- 10 Holdings, LLC." And he lists an ownership percentage 11 down there. HCMLP at 49 percent and HCREP at
- 12 51 percent, correct?
- 13 A Yes.
- 14 Q And then the second LLC he wants Ms. Kim to
- 15 form is SE Multifamily REIT Holdings, LLC. Do you see
- 16 that?
- 17 A I do.
- 18 Q And the second bullet point under number 2A
- 19 states, "We are drafting the LLC agreement so we have
- 20 that covered." Did I read that correctly?
- 21 A Yes.
- 22 Q And I asked you this before. But you don't
- 23 have any evidence that Wick Phillips drafted the LLC
- 24 agreement, right?
- 25 A That is correct.

- 1 Q I'm going to represent to you that none of
- 2 those people work for Wick Phillips either. Do have any
- 3 tuning to dispute that statement?
- 4 A No.
- 5 Q And you and I can agree that Baker McKenzie is
- 6 not Wick Phillips, correct?
- 7 A Yes. We can agree on that.
- 8 Q Okay. Considering I used to work at Baker
- 9 McKenzie, I'm quite aware that they are very, very
- 10 different firms. And so as far as you know, Wick
- 11 Phillips had no involvement in the Delaware Statutory
- 12 Trust structures involved in Project Unicorn, correct?
- 13 A Correct.
- 14 Q And when this email refers to a DST, it's
- 15 referring to the formation of Delaware Statutory Trusts,
- 16 correct?
- 17 A Yes.
- 18 (Exhibit No. 10 was marked for identification.)
- 19 Q All right. Let's go to Exhibit 10. Mr. Kehr,
- 20 Exhibit 10 is excerpts -- actually, it might be the
- 21 whole thing of a deposition of Mr. Mark Patrick. Do you
- 22 see that?
- 23 A Yes. I do.
- 24 Q Did you review this in reaching your opinions
- 25 in this case?

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- 1 A Give me one moment to look at it for a moment.
- 2 The answer is, yes. I believe that I did.
- 3 Q All right. I want to direct your attention to
- 4 certain testimony in this deposition, and I'm going to
- 5 give you the disclaimer, Mr. Kehr, that I know that you
- 6 are not Mr. Patrick, and I know that you don't know
- 7 everything that's inside Mr. Patrick's head. So I'm not
- 8 asking you to guess as to what Mr. Patrick may or may
- 9 not know outside of what he said in this deposition, but
- 10 I do want to get your opinion on some of the things he
- 11 said. Do you understand the disclaimer that I gave you?
- 12 A Yes.
- 13 Q And if you don't feel comfortable giving me
- 14 your opinions on that, I want you to let me know. Okay?
- 15 A Very good.
- 16 Q All right. I want you to turn to page 25, and
- 17 I have these highlighted. Are they highlighted on the
- 18 copies on your computer?
- 19 A Yes.
- 20 Q So starting on line 12, question, "Did you have
- 21 any role in connection with the LLC agreement?" Line
- 22 15, answer, "Yes." Question on line 17, "Please
- 23 describe it." Answer, "I coordinated the document."
- 24 Question, "What does that mean?" Answer, "It means I
- 25 helped facilitate this -- the creation of this document
  - Page 126

- 1 one of the shared employees in the Highland
- 2 organization, might have been involved but --
- 3 Q Fair enough.
- 4 A -- Hunton and Williams definitely was involved.
- 5 Q And you had no evidence that Wick Phillips was
- 6 involved, correct?
- 7 A Correct.
- 8 Q All right. Let's go -- I'm going to try to
- 9 shorten this up for all of us, Mr. Kehr. Let's go to
- 10 page 32.
- 11 A I'm there.
- 12 Q All right. Looking -- starting on line 8. The
- 13 highlighted portions of Mr. Patrick's deposition.
- 14 Question, "Did Wick Phillips have any involvement in the
- 15 representation of any party -- let me restate that. Did
- 16 Wick Phillips represent Highland in connection with the
- 17 original LLC agreement?" Answer, "No." Question, "Did
- 18 Wick Phillips represent HCRE in connection with the
- 19 original LLC agreement?" Answer, "No." Did I read that
- 20 correctly?
- 21 A You did.
- 22 Q And as we sit here today, you have no
- 23 information to dispute what Mr. Patrick said under oath,
- 24 correct?
- 25 A Well, I would -- I would say that the -- the

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- 1 by coordinating with respective parties." Question, "So
- 2 you coordinated with Highland and HCRE?" Answer,
- 3 "Coordinated with Highland and HCRE. I would describe
- 4 it as I was -- I was coordinating the deal between the
- 5 two parties and having that coordination reflect what
- 6 was desired in this LLC agreement." Question, "Okay.7 And what does your coordination actually involve in
- 8 practical terms?" Answer, "Yes. That's a good
- 9 question. I recall calling up the law firm of Hunton
- 10 and Williams to draft and prepare this LLC agreement."
- 11 Question, "And why did you call the law firm of Hunton
- 12 and Williams?" Answer, "It's generally the firm that I
- 13 worked with in the past." Question, "And you worked
- 14 with Hunton and Williams in your capacity as an employee
- 15 of Highland?" Answer, "Yes." Did I read that
- 16 correctly?
- 17 A You did.
- 18 Q You and I agree that Hunton and Williams is not
- 19 Wick, Phillips, Gould, and Martin, correct?
- 20 A Yes.
- 21 Q So this would indicate, as I think you
- 22 indicated earlier, that Hunton and Williams drafted the
- 23 original LLC agreement, correct?
- 24 A Well, it was at least involved in it. There is
- 25 that earlier email that suggests that somebody in-house, Page 127

- 1 questions and answers were a bit loose. I think the 2 accurate statement would be that Wick Phillips was not
- 3 involved in the drafting of the LLC agreement or
- 4 providing legal advice to Highland with regard to the
- 5 LLC agreement. And as I also previously said, I'm not
- 6 aware of any evidence to suggest that Highland relied on
- 7 Wick Phillips for advice or representation concerning
- 8 the negotiation or drafting of the LLC agreement. In
- 9 connection with is a much looser statement, and my view
- 10 is that the Bridge Loan is in connection with the LLC
- 11 agreement.
- 12 Q I understand that, Mr. Kehr, and I think you've
- 13 made that very clear, but I appreciate the clarification
- 14 and I would encourage you to continue to clarify your
- 15 answers when you feel the need. But you and I can agree
- 16 that this witness, who was there at the time, confirmed
- 17 that Wick Phillips did not represent Highland or anybody
- 18 else in connection with the drafting of the original LLC
- 19 agreement, correct?
- 20 A Yes.
- 21 Q All right. Let's go quickly to page 63 of the
- 22 same exhibit.
- 23 A I'm there.
- 24 Q Line three. Question, "Do you know if Wick
- 25 Phillips had any role in connection with the amended LLC Page 129

33 (Pages 126 - 129)

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### Casse 119-33410554-sgjj111 Dolo 02:89598-1812ed E0401120127/1212ter Entitle 040112012712324137913145 ge 135 sof Exhibit 82 Page 89 of 126

- 1 agreement?" Answer, "My understanding they had no
- 2 role." Question, "Did you ever have any communications
- 3 with Wick Phillips in connection with the amended LLC
- 4 agreement?" Answer, "I do not recall ever having
- 5 communications with Wick Phillips on this amended LLC
- 6 agreement." Did I read that correctly?
- 7 A Yes.
- 8 Q You have no evidence to dispute what
- 9 Mr. Patrick said under oath there, correct?
- 10 A That is correct.
- 11 (Exhibit No. 11 was marked for identification.)
- 12 Q All right. Let's go to Exhibit 11. This is
- 13 the actual original limited liability company agreement
- 14 dated as of August 23rd, 2018, correct?
- 15 A Yes.
- 16 Q And you reviewed this, I presume, in connection
- 17 with your opinions in this case?
- 18 A I did.
- 19 Q All right. I want you to turn to page 18 which
- 20 is Schedule A.
- 21 A I have it.
- 22 Q And this provides for the member name, the
- 23 capital contribution, and the percentage interest,
- 24 correct?
- 25 A Yes.

- 1 One is that somewhere in this agreement there
- 2 is a statement of purpose, and the statement of purpose
- 3 is the acquisition of the properties that will go into
- 4 the LLC, and I think that that's the key point. The
- 5 reason for the existence of this loan agreement with
- 6 Highland as a borrower and the reason for the -- the
- 7 Bridge Loan are a single project. What you've called
- 8 Project Unicorn. They're inextricably connected. One
- 9 wouldn't exist without the other.
- 10 Q I think you and I appreciate that, Mr. Kehr,
- 11 and I think we've -- we've spent a lot of time today
- 12 talking about your view of that, correct?
- 13 A We have.
- 14 Q All right. And I know that earlier, in fact,
- 15 you mentioned that provision about the fact that the
- 16 purpose of the loan was for the acquisition of the
- 17 unicorn properties and that that formed the basis of
- 18 your opinion, correct?
- 19 A It forms a basis for my opinion. Yes.
- 20 Q Right. Okay. And -- and -- so fair enough.
- 21 I'm asking for what else forms the basis for your
- 22 opinion that this was a single integrated transaction
- 23 other than what you've already testified to today?
- 24 A I don't think there is anything that I haven't
- 25 testified to already.

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- Q And according to Schedule A on the original LLC
- 2 agreement, HCRE has a capital contribution of \$51 or
- 3 51 percent percentage interest, correct?
- 4 A Yes.
- 5 Q And Highland has a \$49 capital contribution for
- 6 a 49 percent percentage interest, correct?
- 7 A Correct.
- 8 Q Would you -- you would agree with me that these
- 9 are the ownership percentages that made it into the
- 10 Delaware Statutory Trust charts that were attached to
- 11 the loan agreement, correct?
- 12 A Yes.
- 13 Q And this is, at least in part, a basis of your
- 14 opinion that the loan agreement and the LLC agreement
- 15 were a single integrated transaction, correct?
- 16 A Yes.
- 17 Q All right. What else supports your opinion, in
- 18 your view, that these were a single integrated
- 19 transaction such that Wick Phillips loan -- work on the
- 20 loan agreement implicates this document?
- 21 A Well, I first want to make it clear that I'm
- 22 not here as an advocate, and I haven't attempted to
- 23 compile all of the information or arguments that might
- 24 support my opinion, but I -- I can give you a -- a
- 25 couple.

1 Q Okay.

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- 2 A Nothing else I can think of as I sit here.
- 3 (Exhibit No. 12 was marked for identification.)
- 4 Q Fair enough. Thank you very much. All right.
- 5 I'm going to go now to Exhibit 12. You've seen this
- 6 document before, correct?
- 7 A I see it.
- 8 Q And this is the amended and restated limited
- 9 liability company agreement dated as of March 15th,
- 10 2019, to be effective as of August 23rd, 2018, correct?
- 11 A Well, not precise [indiscernible]. Entered
- 12 into as of March 15 to be effective as of the prior
- 13 August.
- 14 Q Okay. I was just reading off the page itself.
- 15 It says dated as of, but I don't think that's -- it's
- 16 probably a distinction without a difference. Can you
- 17 and I agree that this amended LLC agreement was executed
- 18 seven months after the original?
- 19 A Yes.
- 20 Q Thank you. And if you would, I want you turn
- 21 to -- and of course page numbers on this are going to be
- 22 difficult. If you look at the top of each page, there
- 23 is a page number because these were filed in court, and
- 24 I want you to look at page 22 of 30 on Exhibit 12.

25 A Schedule A?

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### Casse 19-34054-sgj111 Docc283593-Bled E0401120127/20terEntb0401120127123413913:145ge 136sof Page 90 of 126 Exhibit 82

- Q Yes. Schedule A? 1
- 2 A Very good.
- Q All right. And we've talked about the fact 3
- 4 that you didn't -- you don't think that the fact that
- 5 this was executed six or seven months after the
- 6 transaction, in your mind, that doesn't change your
- 7 opinion that this was a single integrated transaction,
- 8 correct?
- 9 A Correct.
- 10 Q All right. And this Schedule A includes
- 11 capital contributions and percentage interests that were
- 12 different from the original LLC agreement, correct?
- 13 A That is correct.
- 14 Now, you would also agree with me that these
- 15 are not the ownership percentages that were in the
- 16 original loan agreement and the DST charts in the
- 17 original loan agreement, correct?
- 18 A Correct.
- 19 Q And you would agree with me that Wick Phillips
- 20 had no involvement with this amended LLC agreement,
- 22 A None that I know of.
- 23 Now, are you aware that the claims that are
- 24 made in -- in the -- the lawsuit that -- that Mr. Brown
- 25 is trying to disqualify my firm from that those claims

- 1 integrity of the bar, and if I may give you a slightly
- 2 long-winded answer. It's not --
- 3 (Simultaneous speakers)
- 4 You're not going to complain.
- 5 O No. It's fine. I want to know what you're
- 6 going to say so please go ahead.
- A Sure. The -- it's not intuitively obvious that
- 8 lawyers should be permitted to serve in the courts, and
- 9 there have been times in history when lawyers were
- 10 prohibited from appearing in courts. Sure would
- 11 simplify things if there weren't any pesky lawyers
- 12 involved. But one of the reasons that lawyers are
- 13 involved in the litigation process is that they are
- 14 important to the functioning of the legal system, and
- 15 part of that functioning is that they need to get from
- 16 clients all of the information that the lawyer needs to
- 17 provide an informed and reasonably well-rounded opinion
- 18 and advice to the client, and the lawyer will get that
- 19 information, and the lawyers opinion then will only be
- 20 trusted if the lawyer is viewed as being entirely loyal
- 21 to the client. And that's, in my view, the essential
- 22 reason for the duty of undivided loyalty.
- 23 With a current client, the duty of undivided
- 24 loyalty prohibits the lawyer from being adverse to the
- 25 current client on any matter even if entirely unrelated

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- 1 relate to these allocations that are in the amended LLC
- 2 agreement?
- 3 A That's my understanding.
- All right. And -- but in your opinion, the
- 5 fact that Wick Phillips was not involved in the amended
- 6 LLC agreement does not change your opinion as to the
- 7 fact that this was a single integrated transaction,
- 8 correct?
- A Correct.
- Q Other than what I have asked you about today,
- 11 and we've covered a lot of ground, do you have any other
- 12 opinions that you plan on testifying about if this
- 13 matter comes to a hearing?
- A Well, I can think of one thing that is part of
- 15 my analysis that might come up when I testify that
- 16 hasn't come up so far this morning.
- Q Please. 17
- A And that is with regard to the duty of loyalty. 18
- 19 It is common, and I think this is also true in the
- 20 American Airlines opinion, that the continuing duty of
- 21 loyalty is explained in terms of the interests of the
- 22 former client. But it's my opinion that the duty of
- 23 loyalty has a much broader significance.
- Enforcement of the continuing duty of loyalty
- 25 is important for the maintenance of public confidence in
  - Page 135

- 1 to the subject matter of the current representation.
- 2 It's viewed as destructive of the lawyer-client
- 3 relationship, and, therefore, of the lawyer's role in
- 4 the legal system and the functioning of the legal
- 5 system.

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- Q Can I -- can I ask you a question as you go
- 7 through this, or do you want me to wait until the end?
- A Well, I'm almost done and then by all means.
- 9 All right.
- 10 A It's -- it's -- it's considered to be
- 11 destructive if the client ever sees a current lawyer on
- 12 the other side of the table. Figuratively speaking.
- 13 Q No matter the type of matter?
- 14 A Correct. Without regard to whether it's
- 15 litigation, non-litigation, or some ambiguous in between
- 16 sort of thing such as foreclosure of a deed of trust
- 17 under a power of sale, which is a non-courtroom
- 18 proceeding. I'm not certain whether that's
- 19 transactional or litigation. It's somewhere in between.
- 20 With a former client, a lawyer is permitted to
- 21 be adverse to a former client, but not if it implicates
- 22 the lawyers work for the former client, and that's the
- 23 same or substantially related matter analysis in almost
- 24 every situation. So I think it's important to keep in

25 mind, and courts do from time to time accurately capture Page 137

### Casse 19-34054-sgjj11 Dolo 0283598-Biled E0401120127/22ater Edite0401120127123413913145 ge 1375 sof Exhibit 82 Page 91 of 126

1 the idea that the functioning of the legal system A No. No. I'm not saying -- I wasn't going to 2 depends on loyalty. There are some people in the ethics 2 tell you what an informed consent is --3 committee -- I'm sorry. Community who actually say Q Okay. 4 there is only one duty. It's the duty of undivided A I was going to give you an example of when 5 loyalty, and the other obligations, confidentiality and 5 consent sometimes is given. It's irrelevant to this 6 full disclosure in particular, are viewed by some people 6 situation, but it does happen in joint representations. 7 Outside -- if -- if clients -- if the lawyer were to 7 as simply being elements of the duty of undivided 8 loyally. 8 represent one of the former joint clients against the 9 9 other former joint client on an unrelated matter, there But I would think broadly in terms of the 10 functioning of lawyers in the legal system, and the role 10 would be no prohibition. 11 that they play and the expectations that the legal Q I think you answered my follow-up question. 12 Mr. Kehr, I know that you and I have had disagreements 12 system wants to have clients hold in order for the 13 clients to fully disclose themselves to their lawyers 13 on the substance of your testimony, but have you been 14 and then to trust and rely on the advice that the lawyer 14 treated with respect today? A Always. 15 provides. 15 16 Q All right. I'm going to ask you a couple 16 Q Thanks a lot. Okay. I pass the witness. 17 follow-up questions on that. MR. BROWN: I don't have any questions of 17 18 A Sure. Go ahead. 18 Mr. Kehr. 19 Q When you're talking about the legal systems 19 MR. MARTIN: Okay. I gave you back some time, 20 encouragement and incentives for clients to give their 20 Mr. Kehr. 21 lawyers full information, that necessarily implicates 21 MR. BROWN: Yeah. One thing I just wanted to 22 the rational behind rules such as 105 and the 22 raise is, you know, you asked for other opinions, and I 23 confidentiality, correct? 23 think you said he didn't have any others. He has been 24 designated also as a rebuttal witness, and so after we 24 A It does. 25 Q And you're not alleging that there was a breach 25 know what Mr. Sellman's testimony is, it is possible Page 138 Page 140 1 of confidentiality in this case, correct? 1 that Mr. Kehr will have opinions to rebut Mr. Sellman's A Correct. 2 testimony. Q All right. Secondly, let me give you a 3 MR. MARTIN: Duly noted, Mr. Brown. And I am 4 hypothetical, and I'm not sure I'm even arguing with you 4 not going to dispute that he is allowed to present 5 on this. I just want to make sure I understand the full 5 rebuttal testimony to Mr. Sellman's and Mr. Sellman will 6 scope of your soliloquy here which was, let's say that I 6 be allowed to present -- well, hopefully will be allowed 7 represent Client A, and Client A is in a transaction 7 to present testimony to Mr. Kehr. But duly noted and 8 with Client B, who I do not represent. Are you with me 8 I'm not going to dispute that he can have additional 9 so far? 9 opinions that wouldn't violate the question I just asked 10 him if those opinions are in rebuttal to Mr. Sellman. 10 A Yes. Q Client A continues to be my client. Later on 11 THE REPORTER: Off the record? 11 MR. MARTIN: I'm fine going off the record. 12 there is a dispute between Client A and Client B related 12 13 to another matter. Do you think that because I 13 MR. BROWN: I'm fine. 14 represented Client A in a joint -- in a common matter 14 (Deposition concluded at 3:02 p.m.) 15 with Client B originally, that I can't represent Client 15 16 A against client B? 16 17 A In the same manner or an unrelated matter? 17 Q Let's do both. I think I know what you're 18 19 going to say, but go -- let's do both. Let's say it's 19 20 in the same matter. 20 A Then the answer is, no, unless there has been a 21 22 contractual, informed consent. Sometimes -- there 22 23 sometimes is and I can give you an example. 23 Q No. I -- I know what informed consent is. 24

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25

25 What if it's --

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	CHANGES AND SIGNATURE WITNESS NAME: ROBERT L. KEHR DATE OF DEPOSITION: SEPTEMBER 16, 2021	1 2 In re	,	
5 6	PAGE LINE CHANGE REASON	3 HIC 4 L.P.	) GHLAND CAPITAL MANAGEMENT, ) Chapter 11 . )	
			ebtor. ) Case No.:19-34054-sgj11	
		7	REPORTER'S CERTIFICATE	
		8	DEPOSITION OF ROBERT L. KEHR	
		9	SEPTEMBER 16, 2021	
		10 11	I, Ashley Elizondo, Certified Court Reporter,	
			and for the State of Texas, hereby certify to the	
		13 follo		
		14 15 awa	That the witness, ROBERT L. KEHR, was duly orn by the officer and that the transcript of the oral	
			osition is a true record of the testimony given by	
18			witness;	
19		18	That the deposition transcript was submitted	
20			, to the witness or to the attorney the witness for examination, signature, and returned	
			ne by;	
		22	That the amount of time used by each party at	
			deposition is as follows:	
		24 25	MR. GRANT C. MARTIN-3 HOURS AND 2 MINUTES That pursuant to information given to the	'
	Page 142		Page 1	44
1	I DODERTI VEUR 1 141 - f			
2 3 4 5 6 7 8 9	I, ROBERT L. KEHR, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.  ROBERT L. KEHR  THE STATE OF	2 the formula of the	ssition officer at the time said testimony was taken, following includes counsel for all parties of rd:  RNEXPOINT REAL ESTATE PARTNERS: Brant C. Martin, Esq. Lauren K. Drawhorn, Esq. WICK PHILLIPS 100 Throckmorton Street Suite 1500 Fort Worth, Texas 76102 phone: 817-332-7788 ail: brant.martin@wickphillips.com lauren.drawhorn@wickphillips.com lauren.drawhorn@wickphillips.com thiGHLAND CAPITAL MANAGEMENT: Kenneth Brown, Esq. La Asia Canty, Esq. PACHULSKI STANG ZIEHL AND JONES 10100 Santa Monica Boulevard Floor 13 Los Angeles, California 90067 phone: 310-201-0760 ail: kbrown@pszjlaw.com lsc@pszjlaw.com tube SECURITIES AND UBS AG LONDON BRANCH: Shannon McLaughlin, Esq LATHAM AND WATKINS 885 3rd Avenue Suite 1000 New York, New York 10022 phone: 212-906-4612 ail: shannon.mclaughlin@lw.com  I further certify that I am neither counsel	
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ROBERT L. KEHR  THE STATE OF	2 the forms of the	following includes counsel for all parties of rd:  REXPOINT REAL ESTATE PARTNERS: Brant C. Martin, Esq. Lauren K. Drawhorn, Esq. WICK PHILLIPS 100 Throckmorton Street Suite 1500 Fort Worth, Texas 76102 phone: 817-332-7788 ail: brant.martin@wickphillips.com lauren.drawhorn@wickphillips.com 2. HIGHLAND CAPITAL MANAGEMENT: Kenneth Brown, Esq. La Asia Canty, Esq. PACHULSKI STANG ZIEHL AND JONES 10100 Santa Monica Boulevard Floor 13 Los Angeles, California 90067 phone: 310-201-0760 ail: kbrown@pszjlaw.com LUBS SECURITIES AND UBS AG LONDON BRANCH: Shannon McLaughlin, Esq LATHAM AND WATKINS 885 3rd Avenue Suite 1000 New York, New York 10022 phone: 212-906-4612 ail: shannon.mclaughlin@lw.com	

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1		
1 ta	taken, and further that I am not financially or	1 kbrown@pszjlaw.com
1	otherwise interested in the outcome of the action.	2 September 23, 2021
3	Certified to by me this 23rd day of	1 '
4 5	September, 2021.	3 RE: IN RE Highland Capital Management, L.P.
5		4 DEPOSITION OF: Robert L. Kehr (# 4800824)
6		5 The above-referenced witness transcript is
7	1 V V 2 2 4	6 available for read and sign.
8	Ashley Elypho	7 Within the applicable timeframe, the witness
	0 0	8 should read the testimony to verify its accuracy. If
9	Asniey Elizondo, Texas CSR No. 9465	
	Expiration Date: 02/28/2022	9 there are any changes, the witness should note those
10	VERITEXT LEGAL SOLUTIONS	10 on the attached Errata Sheet.
	Veritext Registration No. 571	The witness should sign and notarize the
11	300 Throckmorton Street	12 attached Errata pages and return to Veritext at
	Suite 1600	13 errata-tx@veritext.com.
12	Fort Worth, Texas 76102	
	(817) 336-3042 (800) 336-4000	8 11
13		15 the witness fails to do so within the time allotted,
14		16 a certified copy of the transcript may be used as if
15		17 signed.
16	DUDTUD GEDTYNG TON	18 Yours,
17	FURTHER CERTIFICATION	19 Veritext Legal Solutions
18 -	TI ' 11 '4' / 4 4 1	_
19	The original deposition was/was not returned	20
	to the deposition officer on	21
21 -	;	22
22	If returned, the attached Changes and	23
	Signature page contains any changes and the reasons	24
1	therefor;	
25	If returned, the original deposition was	25 Page 148
	Page 146	rage 146
1 d	lelivered to, ROBERT L. KEHR;	
2	That \$ is the deposition	
3 o	officer's charges to the DEBTOR for preparing the	
4 o	original deposition transcript and any copies of	
5 e	exhibits;	
6	That a copy of this certificate was served on	
7 a	all parties shown herein and filed with the Clerk.	
8	1	
	Certified to by me this day of	
9 _	*	
9 -	Certified to by me this day of	
9 10 11	Certified to by me this day of	
9 10 11 12	Certified to by me this day of, 2021.	
9 10 11	Certified to by me this day of, 2021.	
9 - 10 11 12 13	Certified to by me this day of	
9 10 11 12	Certified to by me this day of, 2021.  Ashley Elizando, 1 exas CSR No. 9465	
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02/28/2022 146:9	<b>12:43</b> 88:25	<b>2018</b> 92:18 104:4,5	<b>336-3042</b> 146:12
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1 1:10,10 3:11	<b>133</b> 3:21	130:14 133:10	<b>35,000</b> 48:2
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# Federal Rules of Civil Procedure Rule 30

- (e) Review By the Witness; Changes.
- (1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.
- (2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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